

**CHARTER TOWNSHIP OF ELMWOOD  
ZONING BOARD OF APPEALS  
SPECIAL MEETING**

Wednesday May 18, 2022 at 7:00 PM

Location: Township Hall (10090 E. Lincoln Rd., Traverse City, MI)



**ZBA Members:**

Gary Bergstrom, Chair

Jeff Aprill, Vice-Chair

Jason Razavi, Secretary

Ray Haring

Jim O'Rourke

Randy Baidas-Alternate

- A. Call to order - 7:00 pm
- B. Roll Call
- C. Public Comment (Speakers to identify themselves by name and address, limited to 3 minutes each)
- D. Agenda Modifications/Approval
- E. Declaration of Conflict of Interest: *(Items on the Agenda)*
- F. Approval of Minutes: May 4, 2022
- G. New Business:
  - 1. Case #2022-04 Request by Justin Slagal at 9320 E Cherry Bend, Parcel #45-004-020-024-00 for a 22 foot front yard setback variance to replace an existing dwelling with a new dwelling in the Agricultural-Rural Zoning District.
  - 2. Case #2022-05 Request by Thrastos Eftaxiadis and Debra VanLeen at 10321 S Endres Hill Court, Parcel #45-004-018-001-80 for a 22 foot front yard setback variance for solar panels.
  - 3. Election of Officers
- H. Old Business:
- I. Comments from the Chair
- J. Comments from ZBA Members
- K. Announcements
- L. Public Comment (Speakers to identify themselves by name and address, limited to 2 minutes each)
- M. Adjourn - 9:00 pm or majority vote to extend meeting

**NOTICE OF PUBLIC HEARING  
ELMWOOD CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

A Public Hearing is scheduled for Wednesday, May 18, 2022 at 7:00 p.m. before the Elmwood Charter Township Zoning Board of Appeals to consider:

1. Case #2022-04 Request by Justin Slagal at 9320 E Cherry Bend, Parcel #45-004-020-024-00 for a 22 foot front yard setback variance to replace an existing dwelling with a new dwelling in the Agricultural-Rural Zoning District.
2. Case #2022-05 Request by Thrasos Eftaxiadis and Debra VanLeen at 10321 S Endres Hill Court, Parcel #45-004-018-001-80 for a 22 foot front yard setback variance for solar panels.

The files may be viewed at the Township Hall during regular business hours, Monday through Friday, 9:00 am to 5:00 pm or online at [www.elmwoodmi.gov](http://www.elmwoodmi.gov).

The public hearing will be held at the Elmwood Township Hall, 10090 E. Lincoln Road, Traverse City. Individuals can make public comment or submit written comments, in person, at the public hearing. Written comments may be submitted prior to the public hearing by mailing them to: Planning and Zoning Department, 10090 E. Lincoln Rd, Traverse City, MI 49684 or [planner@elmwoodmi.gov](mailto:planner@elmwoodmi.gov). Written comments submitted prior to the public hearing regarding these requests will be received until 5:00 pm, Wednesday, May 4, 2022.

Individuals planning to attend who require reasonable auxiliary aids should contact Connie Preston, Township Clerk at (231) 946-0921.

Publish: April 28<sup>th</sup>, 2022 Leelanau Enterprise

CHARTER TOWNSHIP OF ELMWOOD  
10090 E. LINCOLN ROAD  
TRAVERSE CITY, MI 49684 231-946-0921

NOTICE OF SPECIAL ZBA MEETING

PLEASE TAKE NOTE that the Zoning Board of Appeals of the Charter Township of Elmwood will hold a Special Meeting on May 18<sup>th</sup>, 2022 at 7:00 p.m at Township Hall (10090 E. LINCOLN ROAD TRAVERSE CITY, MI 49684).

The purpose of said meeting is to hold the following Public Hearings

1. Case #2022-04 Request by Justin Slagal at 9320 E Cherry Bend, Parcel #45-004-020-024-00 for a 22 foot front yard setback variance to replace an existing dwelling with a new dwelling in the Agricultural-Rural Zoning District.
2. Case #2022-05 Request by Thrastos Eftaxiadis and Debra VanLeen at 10321 S Endres Hill Court, Parcel #45-004-018-001-80 for a 22 foot front yard setback variance for solar panels.

The public is invited to attend this Special Meeting.

Individuals with disabilities who are planning to attend and require reasonable auxiliary aids should contact the Township Clerk by calling 231-946-0921.

Posted: 02 Cp  
05/22/2022  
11:00am  
Elmwood Township Hall  
Connie Preston, Clerk

CHARTER TOWNSHIP OF ELMWOOD  
10090 E. LINCOLN ROAD  
TRAVERSE CITY, MI 49684 231-946-0921

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Posted: 05/22/2022  
11:00am  
Elmwood Township Hall  
Connie Preston, Clerk



**Charter Township of Elmwood  
Zoning Board of Appeals  
Regular Meeting  
May 4, 2022  
7:00 PM**

**A. CALL TO ORDER:** Gary Bergstrom called the meeting to order at 7:00 p.m.

**B. ROLL CALL:** Jeff Aprill, Jim O'Rourke, Gary Bergstrom  
Excused: Jason Razavi, Ray Haring

**C. PUBLIC COMMENT:** None

**D. AGENDA MODIFICATIONS: MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE THE AGENDA AS PRESENTED. MOTION APPROVED 3-0.**

**E. DECLARATION OF CONFLICT OF INTEREST:** None

**F. APPROVAL OF MINUTES: APRIL 6, 2022: MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE MINUTES OF APRIL 6, 2022 AS PRINTED. MOTION PASSED 3-0.**

**G. NEW BUSINESS:**

**1. Case #2022-02 Request by Erik Gruber and Chris Millward for a front yard variance request regarding property at 10238 and 10240 E Cherry Bend Rd., parcel #45-004-320-001-00. The application requests a 30' front yard setback variance to allow parking within the 30' front yard setback.**

Gary Bergstrom noted there were only 3 Board members present so the applicant did have the option to postpone until next month when hopefully all 5 members would be present. They would need a unanimous vote to pass tonight. Jim O'Rourke stated there was a meeting coming up on the 18<sup>th</sup>. The applicants decided to proceed.

Gary Bergstrom opened the public hearing at 7:03 p.m.

Scott Joswiak of Joswiak Consulting stated Erik Gruber and Chris Millward had recently purchased the building at the southwest corner of Cherry Bend and Sylvia Street. The existing building is a legal conforming structure, but the existing parking area is not. It is their intent to work with the existing site conditions to develop a more conforming site plan that allows for defined parking areas, removal of a curb cut and reduction in

width of the curb cut along Sylvia, additional green space and stormwater management while also maintaining much of the existing buffer along the adjacent creek. The building has most recently been used as a kitchen showroom with an attached garage/warehouse space. The new owners are moving their financial advisor offices to this location and will be occupying roughly 2/3 of the front area and the kitchen showroom is being reduced to about 1/3 of the front area. The garage space will remain unchanged and will be used for personal storage as well as overflow area during showroom changeovers, business files and surplus office equipment.

**Public Comment:** Eric Curren 10212 E. Cherry Bend Rd., the parcel directly west of the aforementioned property. They had mentioned something about how the trees aren't in the best of shape, he took a picture of them that day and you could see that part of the yard definitely needs some sort of attention, but once again they've been through many, many, times when that creek has flooded, not because of their property necessarily, but because the culvert underneath Cherry Bend Rd. is not large enough and the Road Commission did not keep it clean, that is the majority of the flooding problem. They'll notice there is a make shift dam that the ditch area that the Road Commission 2 years ago decided to put another entrance there and it immediately flooded down a block and a half away. He doesn't know why the Road Commission did that when all they had to do was pull stuff out of the culvert, that would have solved the problem, but they did. The way the property has been since they've owned their property 22 years, they haven't had any issues whatsoever except in the major flood time. They haven't had any flooding on their property but he's sure with the green space they're proposing it should be fine. He doesn't know if the asphalt will create a little more water than what the gravel does now but he's not overly concerned about that. His main concern is where they will put the snow when they have snow removal with the proposed plan. He thinks this will be a great opportunity to clean up the front area and he thinks it's an excellent plan. He sees no ill effect from changing and giving a variance to the current ordinance.

Gary Bergstrom asked Staff if she had received any written comments from the public. Staff replied no.

After discussing the variance, the Board went through Findings of Fact and Conditions for approval. The Board agreed on Special Condition a) Where there are practical difficulties, which prevent carrying out the strict letter of this Ordinance. These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

**MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE THEY APPROVE THE VARIANCE OF A 30' FRONT SETBACK FOR PARCEL #45-004-320-001-00 ON CHERRY BEND RD TO ACCOMMODATE THE FRONT YARD PARKING AS PRESENTED. ROLL CALL VOTE: JIM O'ROURKE-AYE, JEFF APRILL-AYE, GARY BERGSTROM-AYE. MOTION PASSED UNANIMOUSLY.**

**2. Case #2022-03 Request by Erik Gruber and Chris Millward for a variance to reduce the required parking ratio, which is based on floor area, regarding property at 10238 and 10240 E Cherry Bend Rd., parcel #45-004-320-001-00. The application requests a variance to reduce the parking ratio for business and profession offices within the NC zoning district from 1 space per 200 sf to 1 space per 270 sf.**

Gary Bergstrom opened the public hearing at 7:40 p.m.

Scott Jowiak stated they tried getting as many parking spaces as possible on the property to be compliant with the Ordinance. When they started looking at different options, they did meet last fall with the Road Commission about how to make things better and they were receptive to them being able to utilize the curb cut along Sylvia St. They'll narrow it down as much as possible and have back in parking as suggested by Staff. When the dust settled, they landed on 15 parking spaces and that included what was approved today; 15 spaces with the size of the building which is around 4,000 sq. ft. for the Ordinance requires them to have 20 parking spaces and with only 15 they fell short. They did some internal evaluations and their business no longer requires them to have an exorbitant number of parking. Northwood Kitchens are usually by appointment so they have control of their traffic. So internally, it's been justified they have more than adequate parking spaces for their project. They have 5 employees and Northwood Kitchens has 2 which leaves them plenty of spaces because most of their meetings are done remotely. Because the garage space is normally unused, there is the ability to park cars there if needed.

The Board discussed the variance.

**Public Comment:** Eric Curren said he finds it unusual to have back in parking, but it's a good solution. He said he's not an expert on run off, but if they figure it out, that's good.

Staff noted the backing into spaces would be needed to comply with the Zoning Ordinance. If you look at the plans, both entrances are on the road right of way and the Ordinance prohibits backing directly into a road right of way and that's why they have

to back in from the right of way into the parking space so when they leave the parking space, they're driving directly into the road right of way. She noted she liked the plan based on current conditions but worries about what might happen in the future because both entrances are off the road right of way which is owned by the county so if they ever do want to put in sidewalks or do drainage that's going to directly impact the site.

The Board went through Findings of Fact and Conditions for approval and agreed on Condition b) Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property uses in the same zoning district. Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

**MOTION BY JEFF APRILL, SECONDED BY GARY BERGSTROM TO GRANT THE VARIANCE OF THE REQUIREMENT FROM 200' AS STATED IN THE ORDINANCE TO 270' FOR PARKING REQUIREMENTS 10238 AND 10240 E CHERRY BEND RD. PARCEL #45-004-320-001-00 CASE #2022-03. ROLL CALL: JIM O'ROURKE-AYE, JEFF APRILL-AYE, GARY BERGSTROM-AYE. MOTION APPROVED BY A UNANIMOUS VOTE.**

**3. ELECTION OF OFFICERS:** Tabled until May 18<sup>th</sup>, 2022.

**H. OLD BUSINESS:** None

**I. COMMENTS FROM THE CHAIR:** Gary thanked Jeff for subbing.

**J. COMMENTS FROM ZBA MEMBERS:** Jeff Aprill said he was proud of them; he feels they made the right decisions on the variances because it will improve the property.

Jim O'Rourke announced he is running for County Commissioner.

**K. ANNOUNCEMENTS:** None

**L. PUBLIC COMMENT:** None

**M. ADJOURN: MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO ADJOURN MEETING AT 8:07PM. MOTION PASSED.**



CASE NUMBER \_\_\_\_\_

Charter Township of Elmwood  
ZONING BOARD OF APPEALS APPLICATION

Property Address: 9320 E. Cherry Bend Rd.

Parcel Number: 45-004-020 024 00 Zoning District: AG

Owner Name: Justin Slagau Owner Phone: 231-883-1422

Owner Address: 9320 E. Cherry Bend Rd.

Applicant Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
(If Different than Owner)

Applicant Address: \_\_\_\_\_

Type of Request: X Variance \_\_\_\_\_ Interpretation \_\_\_\_\_ Appeal \_\_\_\_\_ Other \_\_\_\_\_

Section(s) of Ordinance seeking Variance from: ~~3.15 + 10.3~~

3.15 + 10.3

Required Dimension in Ordinance: 50 ft.

Amount of Variance Requested from Required Dimension: 22 ft. (current structure set back)

Previous Appeal Requests (Date, Request, Decision): OCT. 2019, Sept. 2020

Other Information to Explain Request: unable to proceed with construction due to personal injury + COVID-19.

Approval Criteria:

The following questions must be answered completely, attach additional pages if necessary.

- a. Will this request be contrary to the intent and purpose of the Zoning Ordinance?

b. Will this request establish a use not permitted in the zoning district the property is located in?

No

c. Will this request cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located?

No

d. Will this request be specific to the property and not be so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical?

Yes

e. Will this request relate only to property that is owned or occupied, or where the applicant has equitable interest?

Yes

f. Will this request be the result of a condition created by the applicant?

NO

g. Will this request create possible precedents or affects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance?

NO

In addition to the above questions, the request must also meet ONE of the following:

a. Are there practical difficulties, which prevent carrying out the strict letter of this Ordinance? These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

Yes

b. Are there exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district? Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

Yes

- c. Will this request result in a variation necessary for the preservation of a substantial property right possessed by other properties in the same zoning district?

NO

The following questions need to be answered if the request is involving a nonconforming building or structure:

- a. Does the request increase the measurement of the existing dimensional nonconformity? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, an added level which otherwise complies with this Ordinance could be permitted, but a lateral extension of the structure which would violate the setback requirement by three (3) feet would not be permitted.

NO

- b. Does the request create a new added nonconformity of any type? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, then an appeal to enlarge the structure cannot result in a new setback violation at a different location on the property or a violation of the maximum allowable height of a structure

NO

- c. Does the request have an adverse impact on any surrounding property?


NO



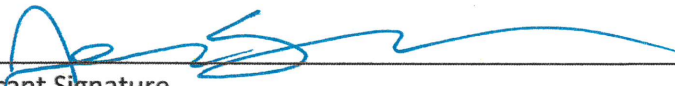
Remarks: Demo existing house. due to failing infrastructure  
No increase in violation is requested. Rebuild new  
structure with same foot print + location as it  
sits today.  
\*please see site plan + other necessary documents  
submitted 7/31/2020 as everything is the same!

**Affidavit:**

The undersigned affirms that he/she or they is (are) the owner, or authorized agent of the owner, and that the answers and statements herein contained and the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is authorized and does hereby grant a right of entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding this request. The undersigned also affirms that he/she or they have reviewed the standards for approval in Article 16 of the Zoning Ordinance.

  
Owner Signature

4/20/2022  
Date

  
Applicant Signature

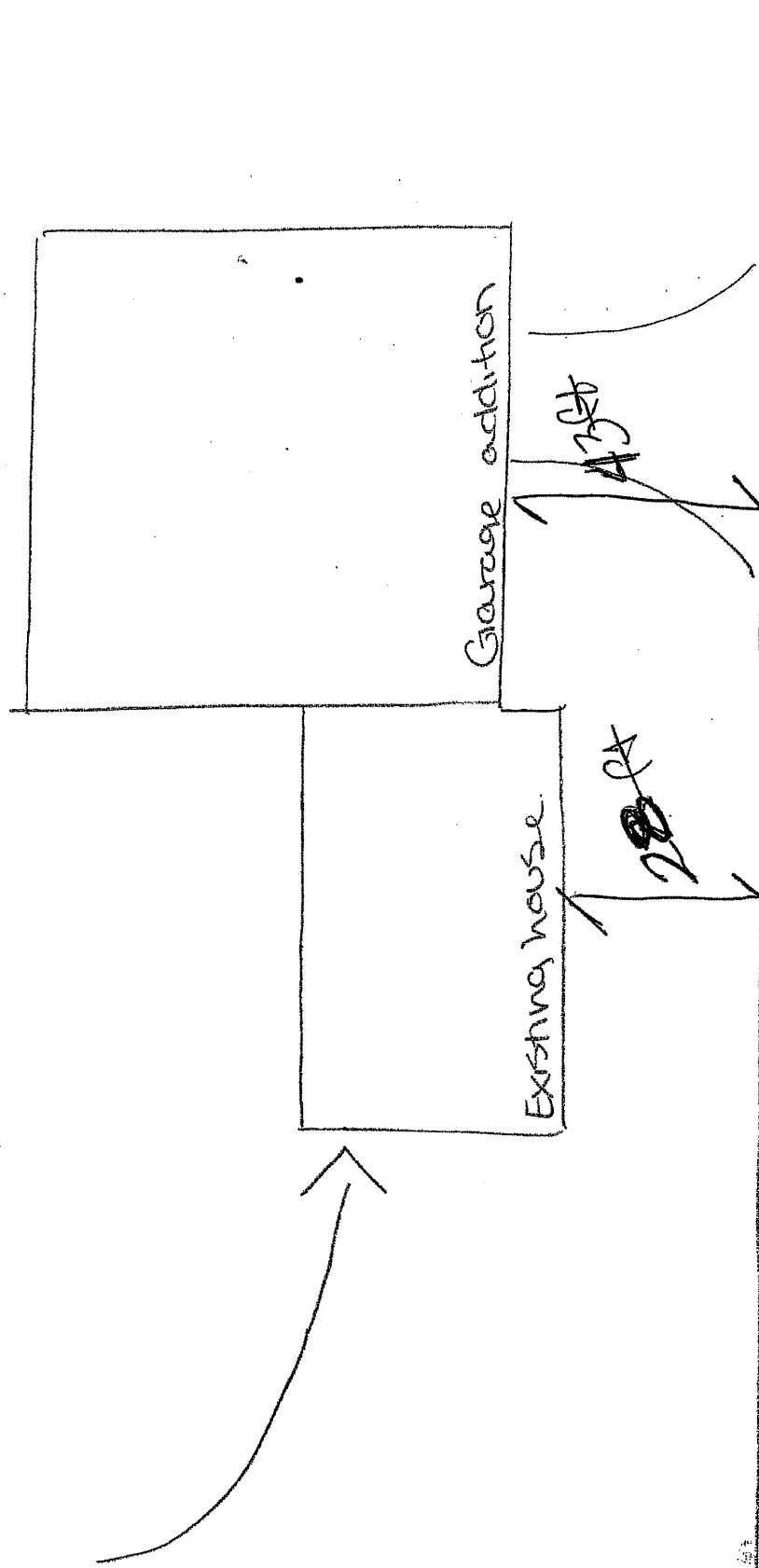
4/20/2022  
Date

**OFFICE USE ONLY:**

ZBA Case Number: \_\_\_\_\_ Fee: \_\_\_\_\_ Paid: \_\_\_\_\_  
Board Decision: \_\_\_\_\_ Date: \_\_\_\_\_  
Date Permit Issued: \_\_\_\_\_ Issued By: \_\_\_\_\_

- Demo existing house due to failing infrastructure. Detail foundation if necessary to permit variance. Rebuild on exact same footprint. One story.

1310 E. Cherry Bend Rd  
TC, MI 49108



E. Cherry Bend Rd.

Justin Slagal

Wednesday, August 26, 2020 8:21 PM

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For the property in question at 9320 E. Cherry Bend Road, We the owners on both sides of that property have no objections to the request to rebuild the existing dwelling.

Any questions we can be reached at (231) 633-4965

Thank You,

Jim and Jan Slagal

Jan M. Slagal

Planning/ Zoning Department  
[planner@elmwoodtownship.net](mailto:planner@elmwoodtownship.net)

Elmwood Charter Township  
10090 E. Lincoln Rd.  
Traverse City, MI 49684

Contact Information  
Ph: (231) 946-0921  
Fax: (231) 946-9320

Old filing  
SC

## NOTICE OF PUBLIC HEARING ELMWOOD CHARTER TOWNSHIP ZONING BOARD OF APPEALS

The following Public Hearing is scheduled for Wednesday, September 2, 2020, at 7:00 p.m. before the Elmwood Charter Township Zoning Board of Appeals to consider

ZBA 2020-01 Request by Justin Slagal at 9320 E Cherry Bend, Parcel #45-004-020-024-00 for a 22 foot front yard setback variance to replace an existing dwelling with a new dwelling in the Agricultural-Rural Zoning District.

A complete copy of the application is available at the Township Hall by appointment or online at [www.leelanau.cc/elmwoodtwp.asp](http://www.leelanau.cc/elmwoodtwp.asp).

The public hearing will be held by electronic remote access. Electronic remote access, in accordance with the Michigan Governor's Executive Order 2020-48, or superseding order, will be implemented in response to COVID -19 social distancing requirements. The public may participate in the public hearing and provide comment at the meeting by calling (312)626-6799, Meeting ID 818 6674 3341.

The public may also watch the meeting live on YouTube. A link to the video is available on the Township website at [leelanau.cc/elmwoodtwp.asp](http://leelanau.cc/elmwoodtwp.asp). This is video only, no public comment will be received via YouTube.

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old filing

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Zoning Board Of  
Appeals Notice Of  
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*Concluded next column*

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***Affidavit of Publication***

Elmwood Township

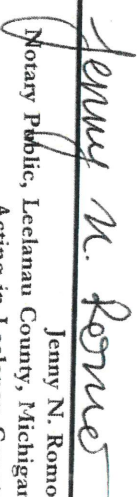
John T. Elchert being first duly sworn, says that he is the publisher of The Leelanau Enterprise-Tribune, a newspaper published in the English language for the dissemination of local or transmitted news and intelligence of a general character and legal news, which is a duly qualified newspaper, and that annexed hereto is a copy of a certain order taken from said newspaper, in which the order was published:

August 13<sup>th</sup>, 2020

Signed: 

John T. Elchert, Publisher

Subscribed and sworn to before me this 13<sup>th</sup> day of August, 2020.

  
Jenny N. Romo,  
Notary Public, Leelanau County, Michigan  
Acting in Leelanau County

*My Commission Expires March 08, 2025*



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Publish: April 28<sup>th</sup>, 2022 Leelanau Enterprise





LEELANAU CONSERVANCY  
105 N FIRST ST PO BOX 1007  
LELAND, MI, 49654

SLAGAL JUSTIN E  
9320 E CHERRY BEND RD  
TRAVERSE CITY, MI, 49684

SLAGAL JAMES E & JAN M  
9300 E CHERRY BEND RD  
TRAVERSE CITY, MI, 49684

EGELER TRACY P  
10601 E PICO DR  
TRAVERSE CITY, MI, 49684

SLAGAL JAMES E & JAN M  
9300 E CHERRY BEND RD  
TRAVERSE CITY, MI, 49684

MOSES KERRI  
11021 S DALZELL RD  
TRAVERSE CITY, MI, 49684

KILWAY KARI L  
11051 S CEDAR BROOK CT  
TRAVERSE CITY, MI, 49684

STOWE STEVEN D  
6484 E DUCK LAKE RD  
LAKE LEELANAU, MI, 49653

LEELANAU TRAILS ASSOCIATIO...  
PO BOX 252  
TRAVERSE CITY, MI, 49685

WESTERFIELD CANDICE M  
9290 E SMEDLEY RD  
TRAVERSE CITY, MI, 49684



**ELMWOOD CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**DECISION AND ORDER**

Applicant: Justin Slagal

Hearing Date: May 18, 2022

Case Number: 2022-04

**PROPERTY DESCRIPTION**

Parcel ID number is 45-004-020-00, the property is located in the Agricultural Rural Zoning District. The parcel is located at 9320 E Cherry Bend Rd. in Traverse City, Section 26, Elmwood Township.

**APPLICATION**

The Applicant seeks a 22 ft front yard variance from the road right of way to replace an existing dwelling with a new dwelling within the 50' front yard setback.

The Board having considered the Application, a public hearing having been held on May 18, 2022, after giving due notice as required by law, the Board having heard the statements of the Applicant/Applicant's attorney and agents, the Board having considered letters submitted by members of the public and comments by members of the public, the Board having considered Exhibits and the Board having reached a decision on this matter, states as follows:

**SPECIFIC FINDINGS OF FACT UNDER THE ELMWOOD CHARTER TOWNSHIP  
ZONING ORDINANCE UNDER SECTION 12.6**

The Board of Appeals may authorize specific variances from requirements of the Ordinance, with the exception of a use variance, provided **all** of the basic conditions listed herein and any one of the special conditions listed thereafter shall be satisfied.

1. Basic Conditions: A variance from this Ordinance:

a. Will not be contrary to the intent and purpose of this Ordinance.

i. The Board finds

The Board finds that this standard has/has not been met.

b. Shall not permit the establishment within a district of any use unless such use is authorized by this Ordinance.

i. The Board finds

The Board finds that this standard has/ has not been met.

- c. Will not cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located.

- i. The Board finds

The Board finds that this standard has/ has not been met.

- d. Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

- i. The Board finds

The Board finds that this standard has/ has not been met.

- e. Will relate only to property that is owned or occupied, or where the applicant has equitable interest.

- i. The Board finds

The Board finds that this standard has/ has not been met.

- f. Shall not be the result of a condition created by the applicant.

- i. The Board finds

The Board finds that this standard has/ has not been met.

- g. Shall be assessed for the possible (precedential) effects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance.

- i. The Board finds

The Board finds that this standard has/ has not been met.

- 2. When all of the foregoing basic conditions can be satisfied, a variance may be granted when one of the following special conditions can be clearly demonstrated:

- a. Where there are practical difficulties, which prevent carrying out the strict letter of

this Ordinance. These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

i. The Board finds

The Board finds that this standard has/ has not been met.

- b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

i. The Board finds

The Board finds that this standard has/ has not been met.

- c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

i. The Board finds

The Board finds that this standard has/ has not been met.

### DECISION

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and passed \_\_\_\_\_, the Board RULED that the Applicant's variance request be GRANTED/DENIED.

### CONDITIONS

- 1.
- 2.
- 3.

### TIME PERIOD FOR JUDICIAL REVIEW

MCL 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.



## **Zoning Board of Appeals Exhibit List**

ZBA 2022-04

9320 E Cherry Bend Rd

Variance request for a 22 foot front yard setback variance to reconstruct house

A. Elmwood Township Zoning Ordinance

B. Zoning Board of Appeals application (submitted by Applicant) containing:

1. ZBA Application Form
2. Sketch of site
3. Correspondence from abutters dated 8/26/2020 (from previous filing)
4. Public hearing notice dated 9/2/2020 (from previous filing)

C. Public Hearing Notice with Mailing List

D.

E.

F.

G.





CASE NUMBER \_\_\_\_\_

Charter Township of Elmwood  
ZONING BOARD OF APPEALS APPLICATION

Property Address: 10321 South Endres Hill Court, Traverse City, MI 49684

Parcel Number: 45-004- 018 - 001 - 80 Zoning District: R-2

Owner Name: Thrasos Eftaxiadis & Debra VanLeen Owner Phone: 231-233-5642

Owner Address: 10321 S. Endres Hill Ct., Traverse City, MI 49684

Applicant Name: Same Phone: \_\_\_\_\_  
(If Different than Owner)

Applicant Address: Same

Type of Request: X Variance \_\_\_\_\_ Interpretation \_\_\_\_\_ Appeal \_\_\_\_\_ Other \_\_\_\_\_

Section(s) of Ordinance seeking Variance from: Section 5.6 Dimensional Requirements

Required Dimension in Ordinance: 30 feet

Amount of Variance Requested from Required Dimension: 22 feet

Previous Appeal Requests (Date, Request, Decision): NO

Other Information to Explain Request: Please see attached cover letter of explanation.

Approval Criteria:

The following questions must be answered completely, attach additional pages if necessary.

a. Will this request be contrary to the intent and purpose of the Zoning Ordinance?

NO. The zoning remains Residential R-2, and it is not affected by the requested variance.

- b. Will this request establish a use not permitted in the zoning district the property is located in?

NO. The use of the property has been and will continue to be residential. The solar array structure is allowed by the Twp Ordinance.

- c. Will this request cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located?

NO. The solar array enhances the value of the subject property, as well as that of the adjacent properties. Furthermore, it improves the natural environment of the Township by generating clean electric power, without removing numerous (>75) mature trees.

- d. Will this request be specific to the property and not be so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical?

YES. Due to the circumstances that resulted in the need for this variance, this request is unique to the property and does not create a precedent.

- e. Will this request relate only to property that is owned or occupied, or where the applicant has equitable interest?

YES. We own this property as our home.

f. Will this request be the result of a condition created by the applicant?

In the Fall 2020, our solar contractor proceeded with the installation of the solar array posts in accordance with the Land Use Permit and under the belief that the required setback is measured from our property line; that line being 33 feet from the solar structure. The solar array posts (footings) and presumably their location, were inspected and approved by the Leelanau County Code official following their installation but before proceeding with the installation of the racking structure and solar panels. Please see our cover letter for further discussion of this issue.

g. Will this request create possible precedents or affects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance?

NO. This request is strictly related to the subject property.

In addition to the above questions, the request must also meet ONE of the following:

a. Are there practical difficulties, which prevent carrying out the strict letter of this Ordinance? These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

YES. Regardless of the interpretation of the setback compliance line, the general location of the solar array is the only one available on the property for the physical/technical reasons discussed in Question b. below. But for the ability to install the solar system at this general location, it would not have been feasible to install it at all. Furthermore, the cost of relocating the solar array at this time after it has been in place for over a year, in order to strictly comply with the setback requirement as now interpreted, is prohibitive; it will have to be totally removed. It cannot be located elsewhere.

b. Are there exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district? Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

YES. The area of the solar array is within a South-West to North-East oriented strip of land along South Endres Rd, clear of vegetation. Since the solar panels require a South exposure, they were installed at a West to East orientation at an approximately 40-degree angle to our South-East property line and to South Endres Rd. Due to the steep terrain of the property north of the solar array, as well as due to heavy vegetation West, North-West and North of the array, we would be required to remove in excess of 75 mature trees to install the array at a different location. Therefore, the solar array was installed as close to South Endres Rd. to maximize solar energy capture, but still more than 33 feet from our south property boundary which we understood to be the setback compliance line.

- c. Will this request result in a variation necessary for the preservation of a substantial property right possessed by other properties in the same zoning district?

NO.

The following questions need to be answered if the request is involving a nonconforming building or structure:

- a. Does the request increase the measurement of the existing dimensional nonconformity? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, an added level which otherwise complies with this Ordinance could be permitted, but a lateral extension of the structure which would violate the setback requirement by three (3) feet would not be permitted.

NA

- b. Does the request create a new added nonconformity of any type? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, then an appeal to enlarge the structure cannot result in a new setback violation at a different location on the property or a violation of the maximum allowable height of a structure

NA

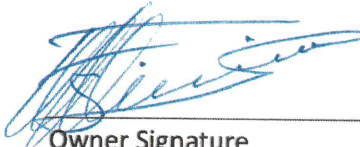
- c. Does the request have an adverse impact on any surrounding property?

NO. The owners of the adjacent property to the South (David and Christine Endres, parcel # 004-018-001-00) with whom we share the easement, do not feel that the array in any way interferes with their access to the home or for snowplowing purposes, and they are in support of this variance request.

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Affidavit:**

The undersigned affirms that he/she or they is (are) the owner, or authorized agent of the owner, and that the answers and statements herein contained and the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is authorized and does hereby grant a right of entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding this request. The undersigned also affirms that he/she or they have reviewed the standards for approval in Article 16 of the Zoning Ordinance.

 and on behalf of  
my wife, Debra VanLeen April 7, 2022  
Owner Signature Date

Same  
Applicant Signature Date

**OFFICE USE ONLY:**

ZBA Case Number: \_\_\_\_\_ Fee: \_\_\_\_\_ Paid: \_\_\_\_\_  
Board Decision: \_\_\_\_\_ Date: \_\_\_\_\_  
Date Permit Issued: \_\_\_\_\_ Issued By: \_\_\_\_\_

Members of the Zoning Board of Appeals, and  
Ms. Sarah Clarren, Zoning Administrator  
Elmwood Township  
10090 E Lincoln Rd  
Traverse City, MI 49684



April 5, 2022

Re: Dimensional Variance Request  
Parcel Tax ID #004-018-001-80  
10321 S. Endres Hill Court  
Traverse City, MI 49684

Dear Members of the Zoning Board of Appeals and Ms. Clarren,

Per Township Ordinance Section 12.7, we respectfully ask the Zoning Board of Appeals for a variance from the setback requirements of Section 5.6 of the Ordinance for the solar array installation on our property for the reasons discussed here and in our attached Zoning Board of Appeals Application. The application along with the processing fee and the Escrow Agreement are part of this variance request.

We live at 10321 South Endres Hill Court (Parcel Tax ID #004-018-001-80), the property on which a ground mounted solar array ("array") is located; we have lived on this property since 2018. The array was installed in October 2020 and it has been in operation since; please see **Exhibits A1 and A2** for photographs of the array. The array is located on the South-Southeast portion of our property which we consider to be the "back" of the property, just North of the South Endres Road private easement, a narrow gravel road/trail. Please see **Exhibit B**, being an aerial photo of our property and neighboring properties showing the approximate location of the array. A scaled survey of our property and the array in relation to the private road easement is provided as **Exhibit C**.

The array was installed by our contractor under a Land Use permit issued by the Township, as well as building permits issued and approved by Leelanau County, and permit by Cherryland Electric Cooperative as a net-metering system. The array was installed at the location shown in the various exhibits for the following reasons:

- The location provides south exposure which is required to maximize solar energy capture.
- It is located on a narrow strip of open land on the property; the rest of the property is mostly wooded.
- There are no large trees south of the array to shade the solar panels.
- The location is within the 300 feet maximum distance required for power transmission to the house.
- The installation did not require removal of the over 75 mature trees present West and North-West of the array.
- The array is >30 feet from our property line which we believed is the setback compliance line.

The array consists of adjustable angle solar panels mounted on a metal racking system attached to six concrete posts (footings). The footings were installed on a West to East orientation, as far South within our property as the setbacks allowed. Therefore, the East end of the array is located closer to the South property line and to South Endres Road than the west end. It had been our and our contractor's belief that the 30-foot setback requirement applies to our property line. The East end of the array is 33 feet from our property line that also corresponds with the north edge of South Endres Road. Furthermore, it had been our understanding that the south line of our property is the "back" or the "side" of the property, since the "front" is the entrance to our property on South Endres Hill Court. Note that the footings of the array had been inspected and approved by the Leelanau County Code Official (October 6, 2020) and there was no objection to their locations. Nevertheless, we now defer to, and respect the Zoning Administrator's determination of the setback compliance line and the definitions of the property "lines".

As stated above, the solar system has been operating since October 2020 with no objection by any of our neighbors or by other property owners within our subdivision. Please see letter of support for this variance by the owners of the two properties with whom we share the private road easement along South Endres Hill Road (**Attachment A**). These property owners, Mr. and Mrs. Endres, are the only users of this private road for ingress & egress to their home at 10275 South Endres Road at the east end of the gravel road. They also snowplow the road for their use. While other property owners technically have access to the private road easement as allowed by the original subdivision, only Mr. and Mrs. Endres use the easement for ingress/egress to their home. The owners of the only other property (parcel 004-018-001-90) that has frontage on the South Endres Road private easement east of our property, access their home from South Endres Hill Court, same as we do.

The Zoning Administrator's Ordinance Violation Notice dated March 4, 2022 was triggered by a complaint filed by a new neighbor (John C. Melichar), a tenant of the property at 10350 South Endres located at the entrance to the subdivision (Parcel 004-018-001-20). While Mr. Melichar does not own property on the portion of the South Endres Road private easement where our property and our solar array is located, he commissioned a survey of the entire easement along South Endres Road in February 2022. He subsequently filed a complaint against us with the Zoning Administrator for the solar array setback. We believe that the complaint against us was in retaliation for complaints brought against him by owners of five properties along the easement for his ongoing illegal operation of a heavy trucking commercial business in blatant violation of the Township Ordinance within our R-2 Residential Zone. It is our understanding that violation notices and legal action against him are currently in progress by the Township.

In response to Mr. Melichar's complaint against us and receipt of the Ordinance Violation Notice issued to us by the Zoning Administrator, we commissioned a re-survey of the gravel road easement along our property line where the solar array is located, by a different surveyor (shown in Exhibit C). Even though the re-survey may not change all findings of the complainant's February 2022 survey, it is notable that our re-survey which was based on existing iron survey markers clearly established that the north edge of the gravel road easement is approximately 2.5 feet south of the previously surveyed easement edge; a substantial survey discrepancy that puts in question the complainant's entire February survey (please see **Exhibit D**). Our re-survey established that the distance from our solar array to the north edge of the

north edge of the easement is 8 feet, and 33 feet to our property line in the middle of the easement. Therefore, this is the basis for the 22-foot setback variance requested by this application.

In summary, we believe we acted in good faith in permitting, planning and installing the solar array. We believe that its installation and operation have enhanced ours and the neighboring properties, and have improved the natural environment of the Township. The granting of the requested variance will allow us the continuing operation of the solar system to everyone's benefit and without interference with the use of the private gravel road easement.

We are available to answer any questions you may have and/or provide additional information. Thank you for your and the Zoning Administrator's time and consideration of this request.

Sincerely

A handwritten signature in blue ink, appearing to read "T. Eftaxiadis", with a stylized flourish at the end.

and on behalf of my wife Debra VanLeen

T Eftaxiadis and Debra VanLeen

10321 South Endres Hill Court

Traverse City, MI 49684



**Exhibit A1**

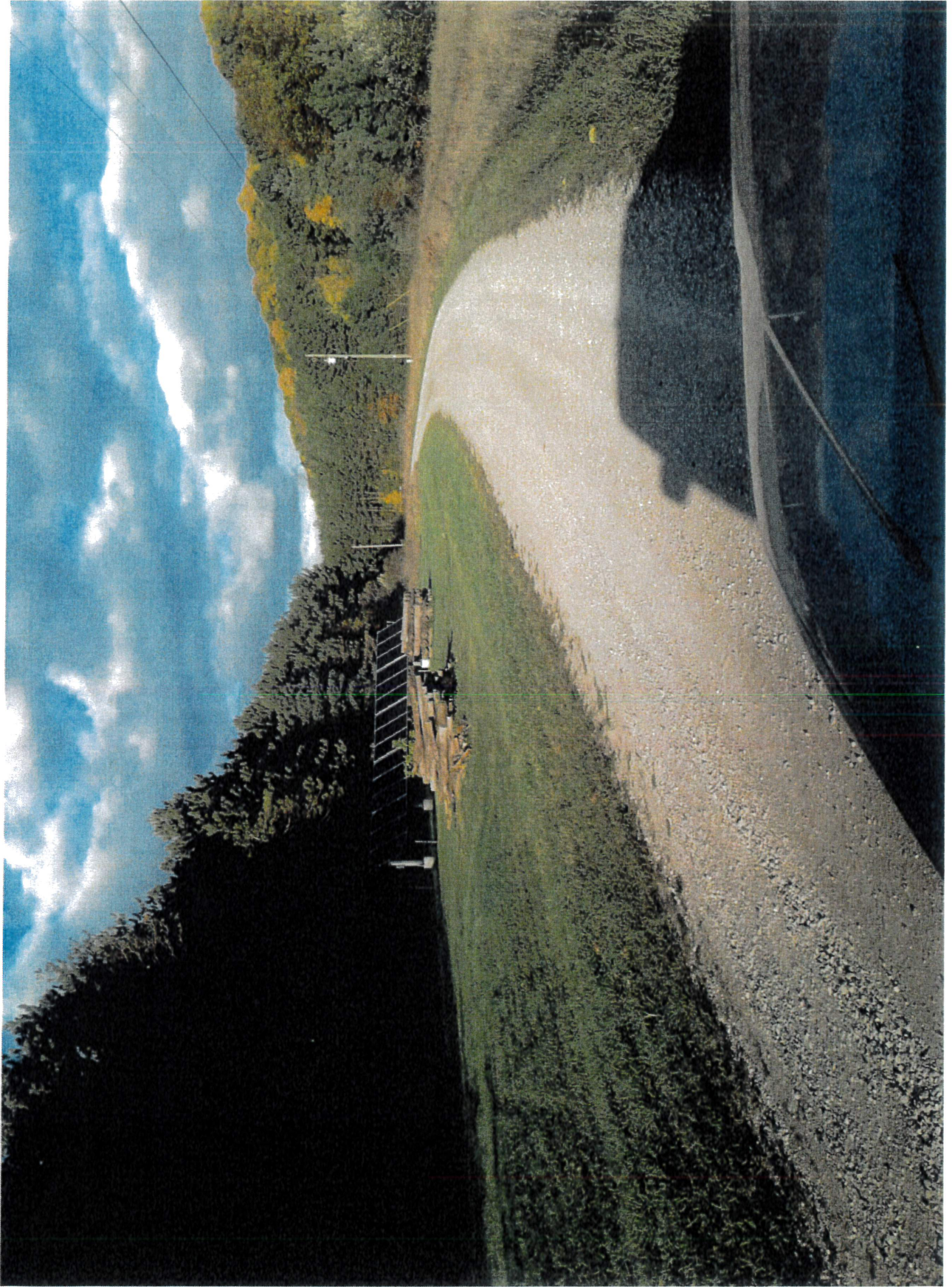


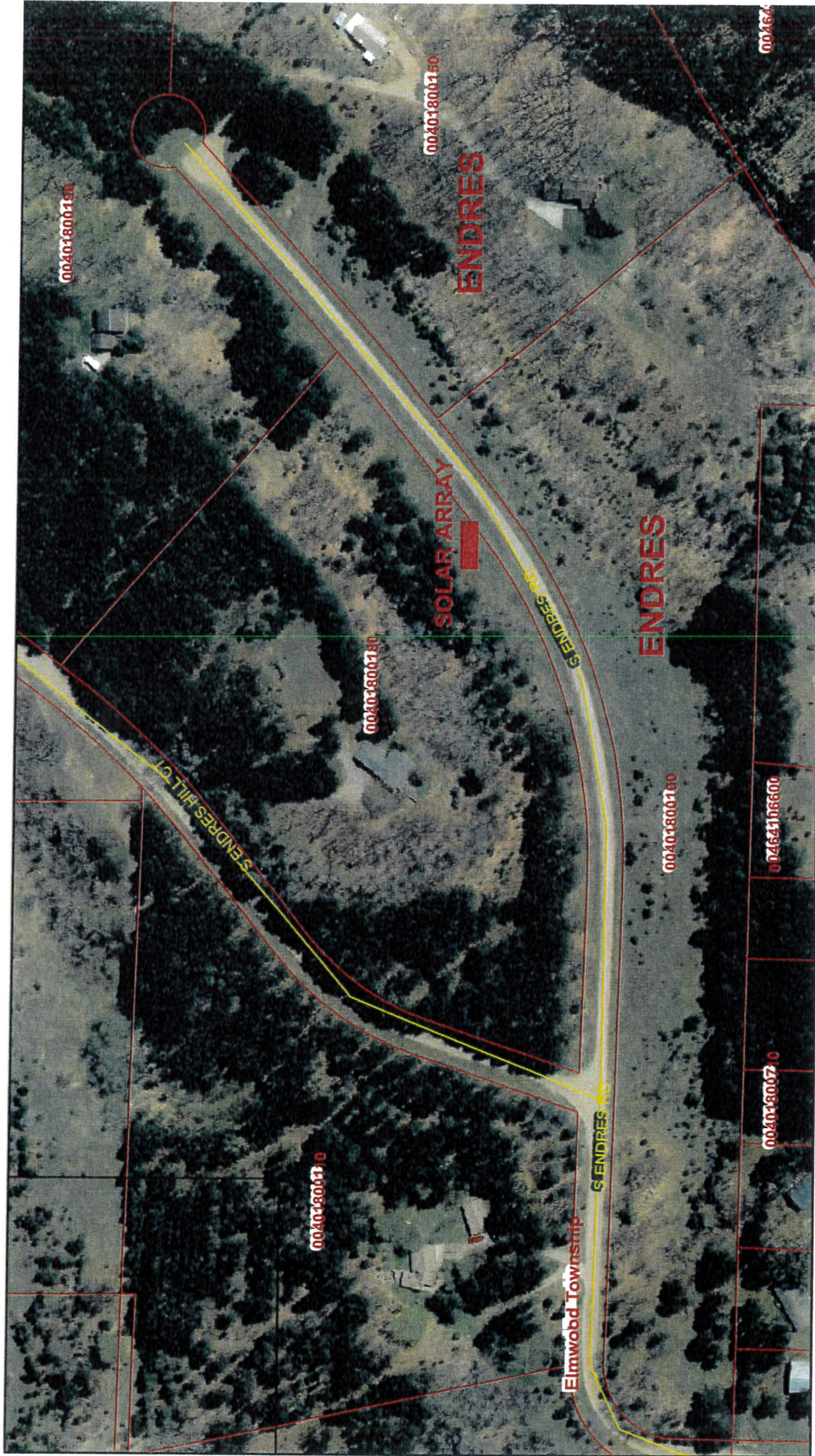


Exhibit A2





Exhibit B

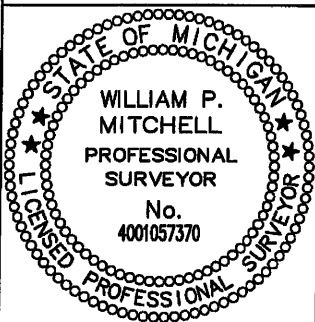
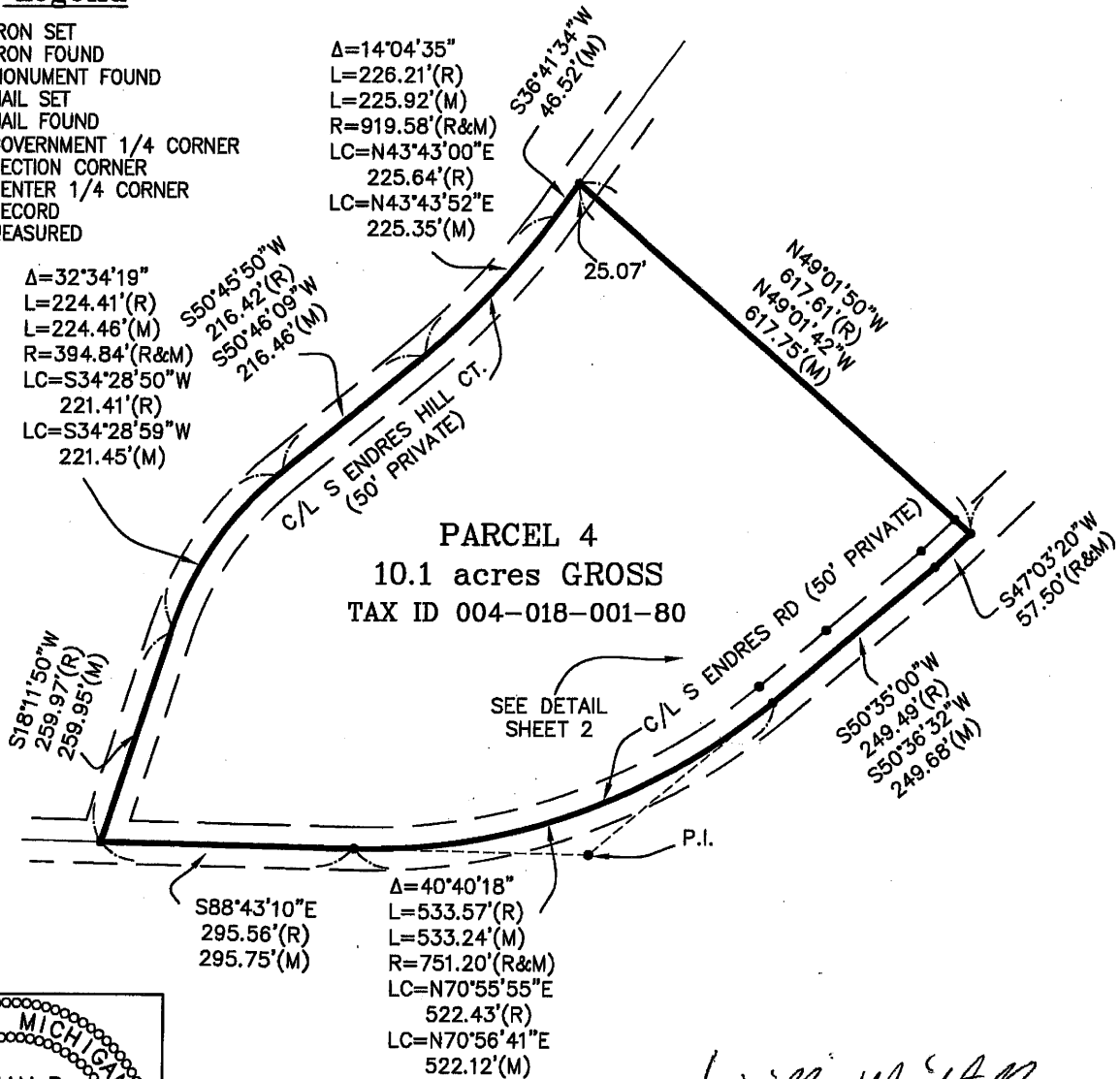


# Exhibit C

## SURVEY SKETCH

### Legend

- IRON SET
- IRON FOUND
- ⊙ MONUMENT FOUND
- △ NAIL SET
- ▲ NAIL FOUND
- ⊕ GOVERNMENT 1/4 CORNER
- SECTION CORNER
- ⊕ CENTER 1/4 CORNER
- (R) RECORD
- (M) MEASURED

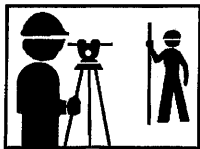


*William P. Mitchell*

William P. Mitchell  
Professional Surveyor  
No. 4001057370

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**Bob Mitchell & Associates P.C.**



SURVEYING / ENGINEERING

404 West Main Street P.O. Box 306  
Kingsley, MI 49649  
(231) 263-5463 • FAX (231) 263-7921  
Toll Free In Michigan 1-800-533-6627  
email [wm@mapcivilsurvey.com](mailto:wm@mapcivilsurvey.com)  
NORTH 1ST STREET  
Harrison, MI 48625

CLIENT:

T EFTAXIADIS

LOCATION:

PART OF THE NORTHEAST ONE-QUARTER,  
SECTION 18, TOWN 28 NORTH, RANGE 11 WEST,  
ELMWOOD TOWNSHIP, LEE LANAU COUNTY,  
MICHIGAN.

DWN. WPM

DATE 3-21-22

FILE NO. 20220070

CK. JEM

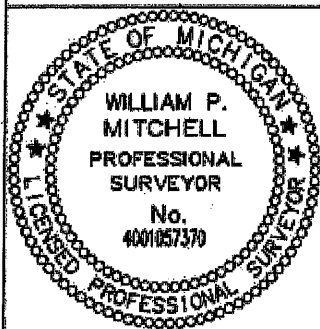
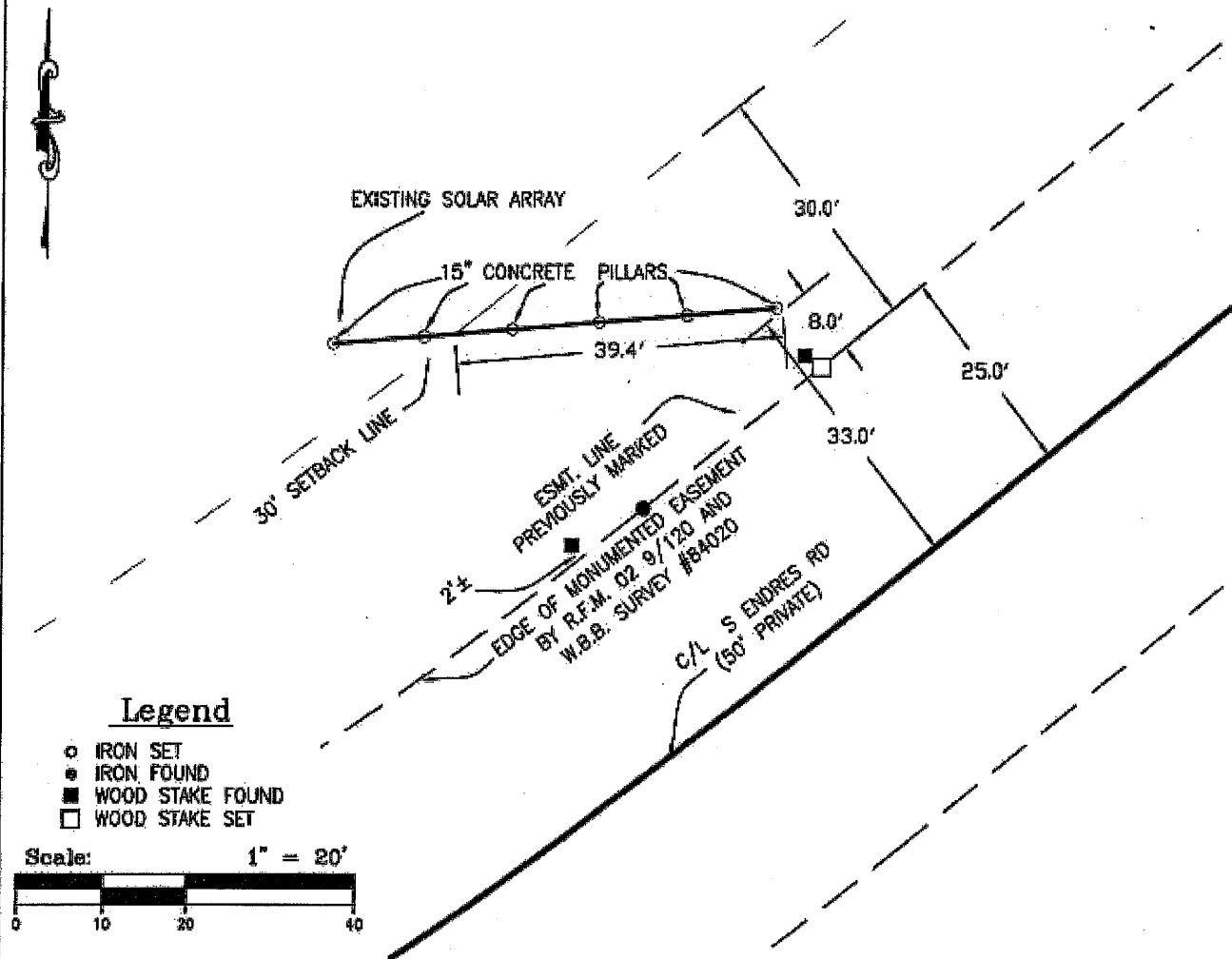
FLD. BK. X

PG. X

SHEET 1 OF 2

# Exhibit C

## SURVEY SKETCH



*William P. Mitchell*

William P. Mitchell  
Professional Surveyor  
No. 4001057370

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Bob Mitchell &  
Associates  
P.C.



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email [wm@mapcivilsurvey.com](mailto:wm@mapcivilsurvey.com)  
NORTH 1ST STREET  
Harrison, MI 48825

CLIENT:

T EFTAXIADIS

LOCATION:

PART OF THE NORTHEAST ONE-QUARTER,  
SECTION 18, TOWN 28 NORTH, RANGE 11 WEST,  
ELMWOOD TOWNSHIP, LEELANAU COUNTY,  
MICHIGAN.

DRAWN: WPM

DATE 3-21-22

FILE NO. 20220070

CHK: JEM

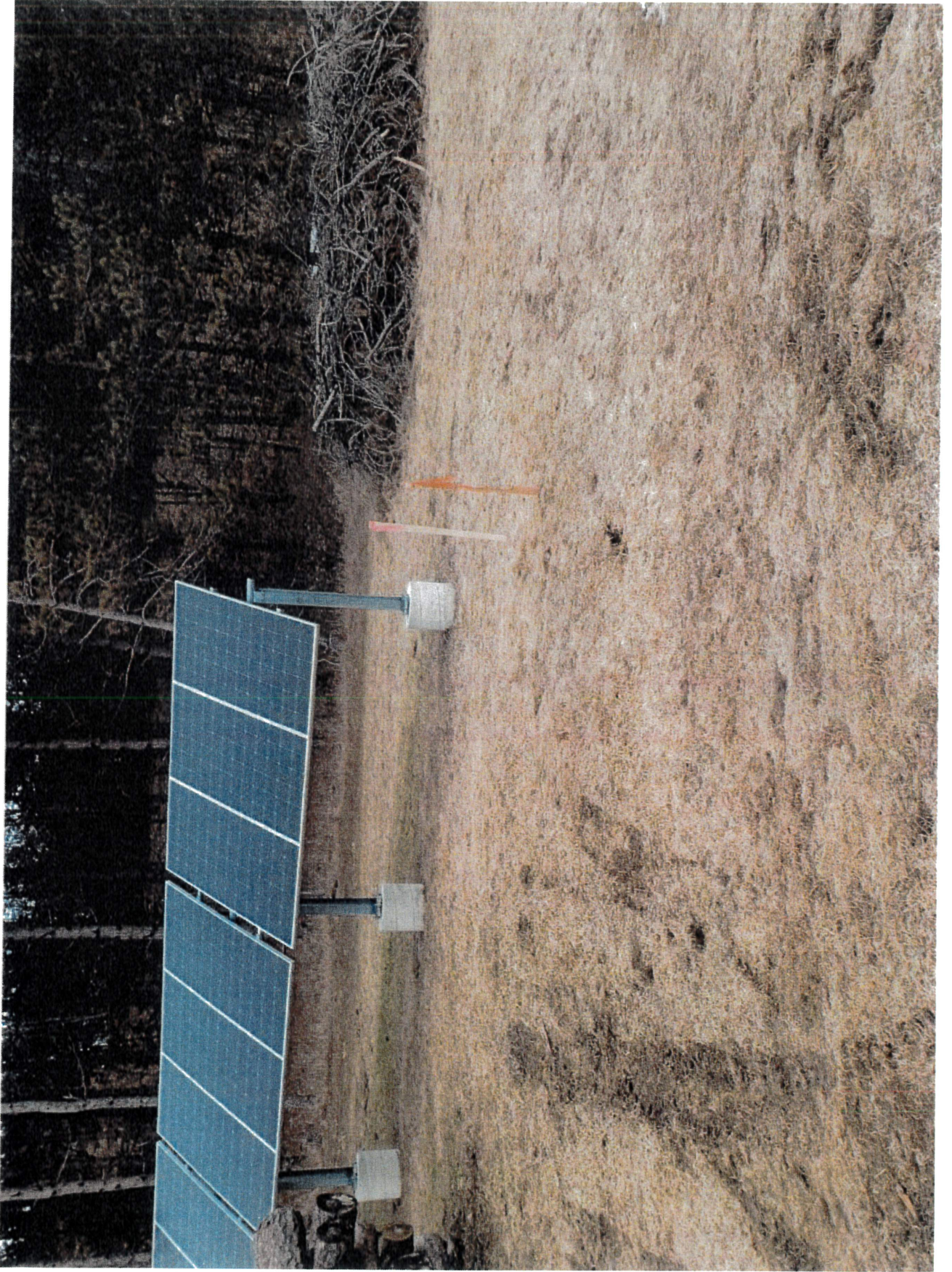
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PG. X

SHEET 2 OF 2



Exhibit D



## ATTACHMENT A



David & Christine Endres  
10275 S. Endres Road  
Traverse City, MI 49684

April 5, 2022

**TO WHOM IT MAY CONCERN:**

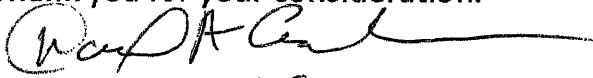
The purpose of this letter is to inform the Township that we are not negatively affected by Mr. Eftaxiadis' solar array system; whether technically inside or outside the private easement, and we support his application for a variance from the setback requirement.

We are the property owners of parcels 004-018-001-50 (our home) and 004-018-001-00 (vacant lot). As owners of these two parcels, we share with Mr. Eftaxiadis a private road easement along the entire south boundary of his property, including the portion of the area where his solar array is located.

We are the only active users of this easement for ingress and egress to our home on 10275 South Endres Road, located at the extreme east end of the easement on parcel 004-018-001-50. As owners of the adjacent vacant parcel 004-018-001-00 we may construct a residential structure on this parcel, if we so choose, in the future.

Again, we support Mr. Eftaxiadis' application for a variance from the setback requirement.

Thank you for your consideration.

  
Christine K Endres

David & Christine Endres



## NOTICE OF PUBLIC HEARING ELMWOOD CHARTER TOWNSHIP ZONING BOARD OF APPEALS

A Public Hearing is scheduled for Wednesday, May 18, 2022 at 7:00 p.m. before the Elmwood Charter Township Zoning Board of Appeals to consider:

1. Case #2022-04 Request by Justin Slagal at 9320 E Cherry Bend, Parcel #45-004-020-024-00 for a 22 foot front yard setback variance to replace an existing dwelling with a new dwelling in the Agricultural-Rural Zoning District.
2. Case #2022-05 Request by Thrastos Eftaxiadis and Debra VanLeen at 10321 S Endres Hill Court, Parcel #45-004-018-001-80 for a 22 foot front yard setback variance for solar panels.

The files may be viewed at the Township Hall during regular business hours, Monday through Friday, 9:00 am to 5:00 pm or online at [www.elmwoodmi.gov](http://www.elmwoodmi.gov).

The public hearing will be held at the Elmwood Township Hall, 10090 E. Lincoln Road, Traverse City. Individuals can make public comment or submit written comments, in person, at the public hearing. Written comments may be submitted prior to the public hearing by mailing them to: Planning and Zoning Department, 10090 E. Lincoln Rd, Traverse City, MI 49684 or [planner@elmwoodmi.gov](mailto:planner@elmwoodmi.gov). Written comments submitted prior to the public hearing regarding these requests will be received until 5:00 pm, Wednesday, May 4, 2022.

Individuals planning to attend who require reasonable auxiliary aids should contact Connie Preston, Township Clerk at (231) 946-0921.

Publish: April 28<sup>th</sup>, 2022 Leelanau Enterprise

SWANSON JAMES D & PATRICI...  
10330 S ENDRES RD  
TRAVERSE CITY, MI, 49684

DEMOULPIED DONALD D  
207 E TENTH ST  
TRAVERSE CITY, MI, 49684

ENDRES DAVID A & CHRISTINE...  
10275 S ENDRES RD  
TRAVERSE CITY, MI, 49684

GTB OF OTTAWA & CHIPPEWA ...  
2605 N WEST-BAY SHORE DR  
SUTTONS BAY, MI, 49682

WETZEL RONALD K & CAROL F  
8663 E FOUCH RD  
TRAVERSE CITY, MI, 49684

EFTAXIADIS THRASOS & VANLE...  
10321 S ENDRES HILL CT  
TRAVERSE CITY, MI, 49684

KOLTUNIAK ROBERT M & DON...  
10191 S ENDRES HILL CT  
TRAVERSE CITY, MI, 49684

DEMOULPIED DONALD D  
207 E TENTH ST  
TRAVERSE CITY, MI, 49684

GTB OF OTTAWA & CHIPPEWA ...  
2605 N WEST-BAY SHORE DR  
SUTTONS BAY, MI, 49682

RUBLE MICHAEL H & DOROTH...  
10080 S ENDRES HILL CT  
TRAVERSE CITY, MI, 49684

ENDRES DAVID A & CHRISTINE...  
10275 S ENDRES RD  
TRAVERSE CITY, MI, 49684

LAMMERS KENNETH J & VERO...  
8645 E FOUCH RD  
TRAVERSE CITY, MI, 49684

SWANSON JAMES D & PATRICI...  
10330 S ENDRES RD  
TRAVERSE CITY, MI, 49684

Dear Elmwood Township Zoning Board of Appeals,

My name is John C. Melichar and I live at 10350 S. Endres Rd. I am writing this letter of opposition/nonsupport in regard to Mr. Eftaxiadis and Mrs. Vanleen's 22' setback variance request.

Mr. Eftaxiadis and Mrs. Vanleen claim that they thought the property line used for the setback measurement was in the center of the road. This appears to be a lie, as the site plan provided by their contractor and submitted to Elmwood Township, dated 9/1/2020, clearly shows where the 30' setback is to be measured from. It is not in the center of the road, contrary to Mr. Eftaxiadis and Mrs. Vanleen's claim that they thought it was. The same goes for the tax parcel map provided by Mr. Eftaxiadis and Mrs. Vanleen, which also shows that the property line is not in the center of the road. The Land Use Permit issued by Elmwood Township on 9/10/2020 clearly states the setback is to be 30'. The land use application permit clearly states, "...work will conform with the Township Zoning Ordinance...". This application was signed by both Mr. Eftaxiadis and his contractor and they chose to ignore it.

Mr. Eftaxiadis, Mrs. Vanleen and their contractor were all well aware what the stated setback would be, where it was to be measured from per their site plan and what the permit from Elmwood Township stated the setback would be. At no time during the permit or construction process did either Mr. Eftaxiadis, Mrs. Vanleen or their contractors stop construction and ask for a setback variance. Why?

There is no good reason why the solar array should not have been built within the required setback and there is no good reason why it cannot be moved currently to meet the required setback. There is no hardship to claim. Mr. Eftaxiadis and Mrs. Vanleen's claim is, "... mature trees need to be removed...". Well, Mr. Eftaxiadis and Mrs. Vanleen had a number of "mature trees" removed already for the solar array to be installed where it is currently. The additional "...mature trees..." that (may possibly) need to be removed are a mix of Austrian and Red Pine and are nearing the end of their life cycle. Conveniently we and a few neighboring properties are having some logging done and I am sure the logging company would be happy to remove the necessary trees and even pay Mr. Eftaxiadis and Mrs. Vanleen for them. If not, I am in the land clearing business and would be happy to remove any necessary trees free of charge to help Mr. Eftaxiadis and Mrs. Vanleen comply with the zoning.

We have had a survey done and from the stake our surveyor installed to the edge of the solar panel is approximately 4.66' if the 22' variance Mr. Eftaxiadis and Mrs. Vanleen are requesting is approved they would still be out of compliance by 3.34'

There is another survey stake that has shown up in front of ours (closer to Endres Rd) which I am guessing Mr. Eftaxiadis and Mrs. Vanleen are using that stake as their reference point. I would question the validity of their survey as it is 2.5' away from our survey stake.

If we use the survey stake installed by Mr. Eftaxiadis and Mrs. Vanleen and it is correct, that would put the edge of the solar panel approximately 6.83' away from the stake and leave Mr. Eftaxiadis and Mrs. Vanleen still 1.17' out of compliance with their own 22' variance request.

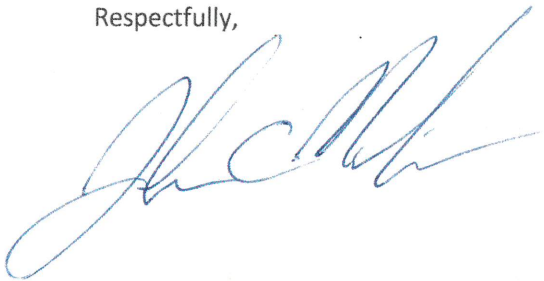
I believe that Mr. Eftaxiadis and Mrs. Vanleen are getting their 22' request by measuring from the concrete pier and not the panel, which the panel itself is the closest part to the property line.

Mr. Eftaxiadis and Mrs. Vanleen claim that if the solar array setback variance is approved it will not set a precedent. I believe that statement to be untrue and that it will set a precedent not only for the homes on S. Endres Rd and S. Endres Hills Ct but Elmwood Township as a whole, that you can submit site plans that state what your setbacks will be, be issued a permit which clearly states the required setbacks, ignore the required setbacks, then when you get caught just claim ignorance. Ignorance is not a defense.

In conclusion we are not talking about a simple mistake of a couple inches or a few feet. We are talking about 20+ feet after the fact. The solar array was willfully not installed in compliance with the permit issued by Elmwood Township. The solar array was willfully not installed the way Mr. Eftaxiadis and Mrs. Vanleen's own site plan stated it would be. No variance was requested prior to or during construction. There is no hardship to claim. There is no reason it could not have been installed to meet the Elmwood Township setback requirements. There is no reason it cannot now be moved to meet the Elmwood Township setback requirements.

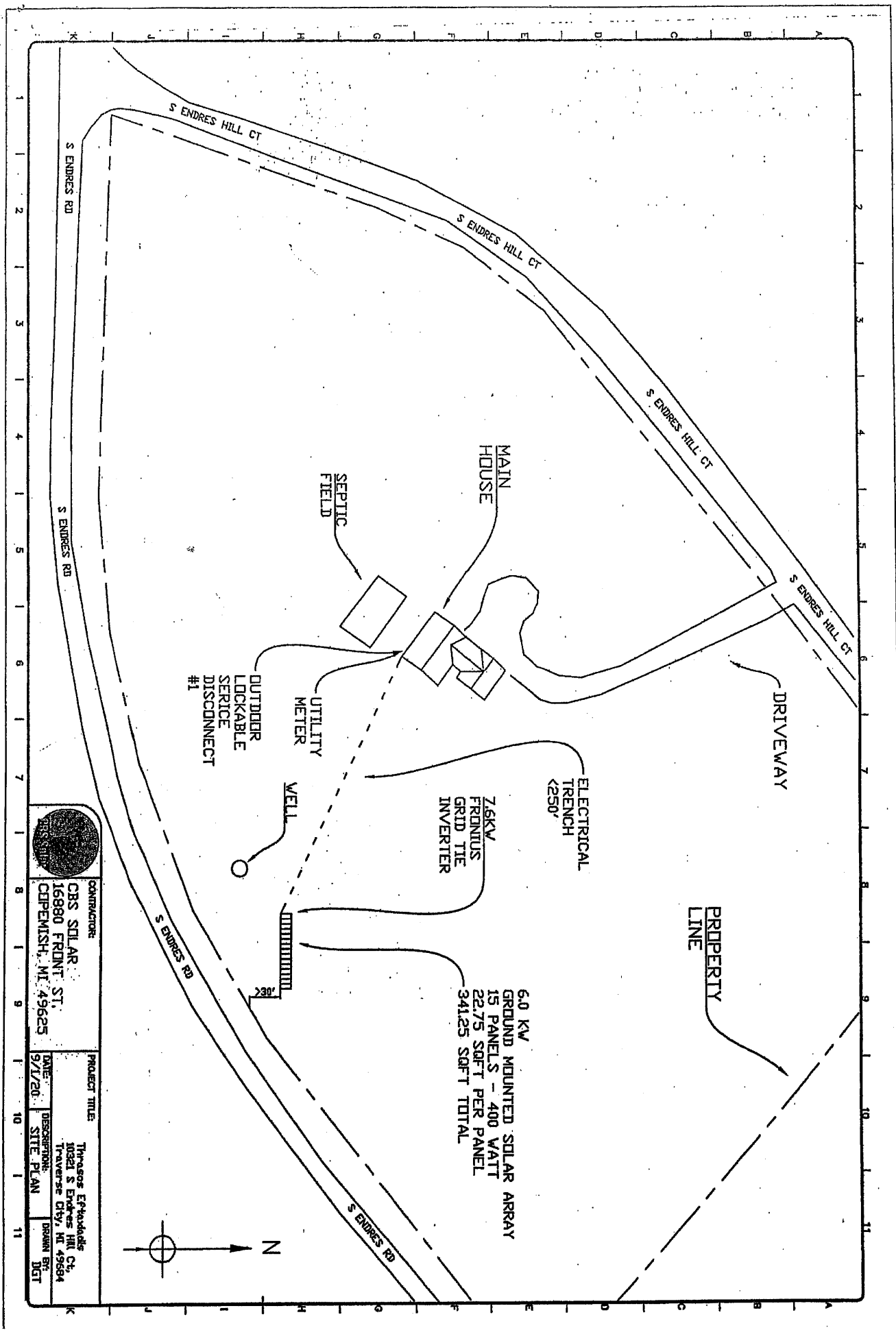
I have included images of the area where the solar array is currently installed, satellite pictures of the area before construction and during construction. Also included are pictures of the solar array present day, pictures of the survey stakes and measurements, copies of Mr. Eftaxiadis and Mrs. Vanleen's contractor's site plan, permit application, Land Use Permit, and related construction drawings.

Respectfully,



John C. Melichar

10350 S. Endres Rd



CONTRACTOR:		PROJECT TITLE:	
CBS SOLAR		Thrasos Enterprises	
16880 FRONT ST.		10321 S Endres Hill Ct.	
COPENHAGEN, MI 49625		Traverse City, MI 49684	
DATE: 9/7/20		DESCRIPTION: SITE PLAN	
		DRAWN BY: DGT	

018-001-80  
Permit Number 2020-40

# Land Use Permit

Charter Township of Elmwood  
10090 E. Lincoln Rd  
Traverse City, MI 49684  
(231) 946-0921

THIS PERMIT MUST BE POSTED ON THE PROPERTY DURING CONSTRUCTION

PERMIT NUMBER: 2020-40

Date: September 10, 2020

Permit Expires on: September 9, 2021

Property Address: 10321 S Endres Hill Ct  
Parcel Number: 004-018-001-80

Owner: Thrassos Efraxiadis  
Address: 10321 S Endres Hill Ct, TC

Contractor: Contractors Building Supply  
Address: PO Box 67, Copemish, MI 49625

Type of Structure: Detached Solar Array

Purpose of Permit:

Install ground mounted solar array, 15 Panels.

Setbacks:

Front: 30 ft South

Rear: +250 ft North

Side: +250 ft West

Side: 60 ft East

---

Zoning Administrator

Two Use Only



Charter Township of Elmwood  
LAND USE PERMIT APPLICATION

Property Address: 10321 S. Endres Hill Ct

Parcel Number: 45-004-018 - 001 - 80 Zoning District: \_\_\_\_\_

Owner Name: Thrassos Eftaxiadi's Owner Phone: 231.233.5642

Owner Address: 10321 S. Endres Hill Ct.

Applicant Name: Contractors Building Supply Inc / Tyson Oshea Phone: 231.378.2936  
(If Different than Owner)

Applicant Address: PO Box 167, Capemish, MI 49625

**PROPOSED STRUCTURE INFORMATION**

Type: <u>Residential</u>	Commercial	Sign	Home Occupation	Other
Structure Type	Building Size	Total Square Feet	Height	Stories
Check all that apply	Overall Dimensions			
<input type="checkbox"/> Single Family Dwelling	<input checked="" type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Duplex	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Garage/Accessory Building	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Deck	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Porch	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Ag Building	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Commercial	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Home Occupation	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input type="checkbox"/> Sign	<input type="checkbox"/> X	_____ sq ft	_____ ft	_____
<input checked="" type="checkbox"/> Other: <u>Ground mount Solar Array</u>	<u>x 15 panels</u> <u>(22.75 sq ft)</u> <u>per panel</u>	<u>341.25</u> sq ft <u>panel area</u>	<u>&lt; 11</u> ft	_____

Foundation Circle all that apply  
Slab Crawl Piers Footings Full

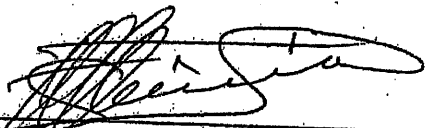
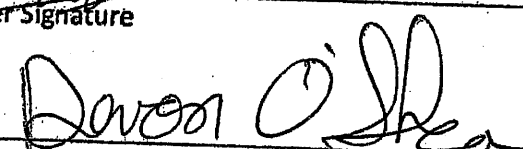
If Full Basement, circle all that apply Finished Unfinished Rough Walkout

(over)

Number of Bedrooms: _____	Setbacks:		
Number of Bathrooms: _____ <i>N/A</i>	<u>Proposed</u>	<u>Required</u>	
Remarks: _____	Front: _____	Front: _____	
_____	Rear: _____	Rear: _____	
_____	Left: _____	Left: _____	
_____	Right: _____	Right: _____	

**Affidavit:**

The granting of a land use permit does not insure that the proposed structure has access for fire suppression and emergency vehicles. Any driveway, or combination of access roads and driveways, must be constructed in a manner to provide access, and the same is the responsibility of the property owner. Further, the owner shall maintain any such access free of snow, ice, and other obstructions. It is agreed that all such work will conform with the Township Zoning Ordinance and all other ordinances of the Charter Township of Elmwood and that said Township shall not be liable for any damages resulting therefrom. It is further agreed that all work will comply with the State Health Department, Building Code, and all other necessary codes. Land Use Permit Valid for six months from the date of issuance. I have read and acknowledge the information on this application and that the information supplied is accurate and true.

	8/3/20
Owner Signature	Date
	8/4/20
Applicant Signature	Date

**OFFICE USE ONLY:**

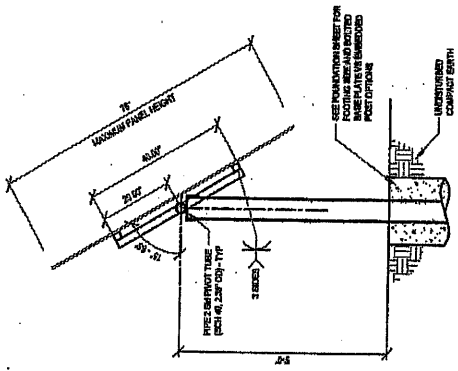
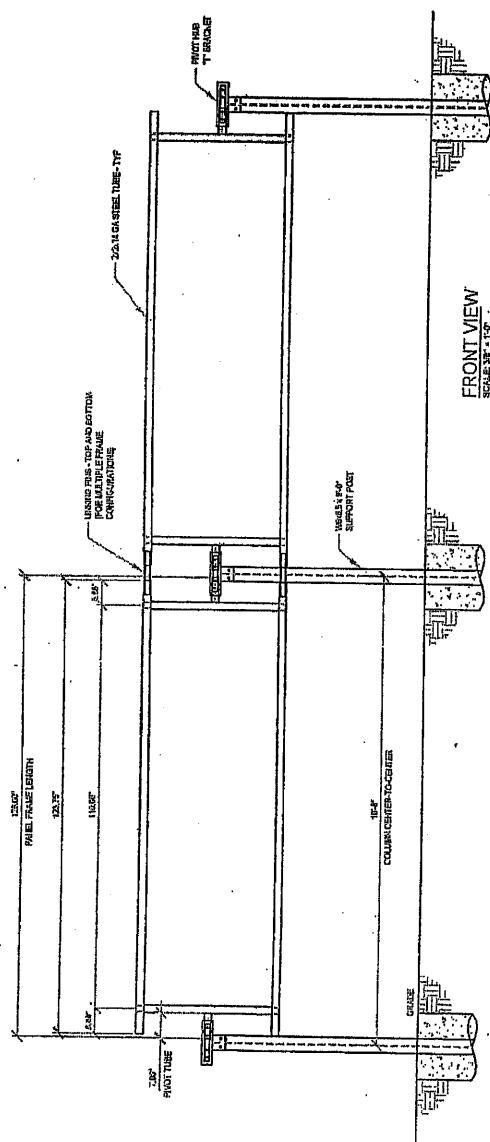
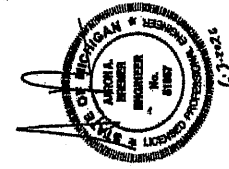
Permit Number: \_\_\_\_\_

Date Permit Issued: \_\_\_\_\_

Issued By: \_\_\_\_\_

Fee: \_\_\_\_\_ Paid: \_\_\_\_\_





# STRUCTURAL NOTES

1. These are structural frame and foundation drawings only. The frame has been designed for the sole purpose of supporting the solar panel array shown at a maximum angle of 65 degrees from horizontal for the design wind loads specified.
2. The following limitations apply:
  - 2.1. Site topography is relatively level. Design does not include wind speed-up effects for frames located on isolated hills, ridges, and escarpments.
  - 2.2. The solar panel height shall not exceed 5'-0" (60") above grade.
  - 2.3. Solar panel height shall not exceed 6'-0" (72") in vertical length.
  - 2.4. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.5. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.6. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.7. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.8. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.9. Solar panel height shall not exceed 10'-0" (120") in vertical length.
  - 2.10. Solar panel height shall not exceed 10'-0" (120") in vertical length.
3. Solar panel height shall not exceed 10'-0" (120") in vertical length.
4. Solar panel height shall not exceed 10'-0" (120") in vertical length.
5. Solar panel height shall not exceed 10'-0" (120") in vertical length.
6. The soil and subsoil conditions are assumed to be as shown on the site plan. The design is based on the 2015 International Building Code (IBC) and ASCE Standard 7-10 "Minimum Design Loads For Buildings and Other Structures".
7. The soil and subsoil conditions are assumed to be as shown on the site plan. The design is based on the 2015 International Building Code (IBC) and ASCE Standard 7-10 "Minimum Design Loads For Buildings and Other Structures".
8. The soil and subsoil conditions are assumed to be as shown on the site plan. The design is based on the 2015 International Building Code (IBC) and ASCE Standard 7-10 "Minimum Design Loads For Buildings and Other Structures".
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11. The soil and subsoil conditions are assumed to be as shown on the site plan. The design is based on the 2015 International Building Code (IBC) and ASCE Standard 7-10 "Minimum Design Loads For Buildings and Other Structures".
12. The soil and subsoil conditions are assumed to be as shown on the site plan. The design is based on the 2015 International Building Code (IBC) and ASCE Standard 7-10 "Minimum Design Loads For Buildings and Other Structures".
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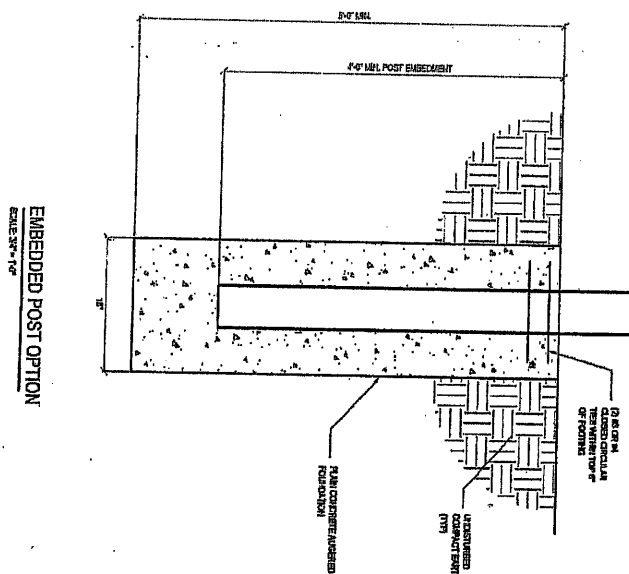
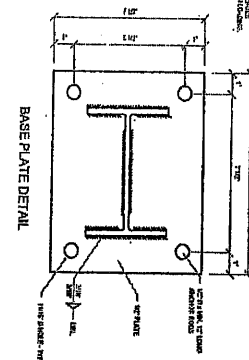
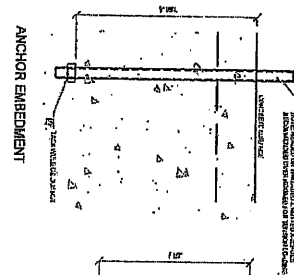
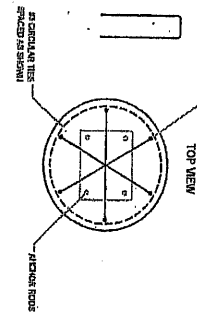
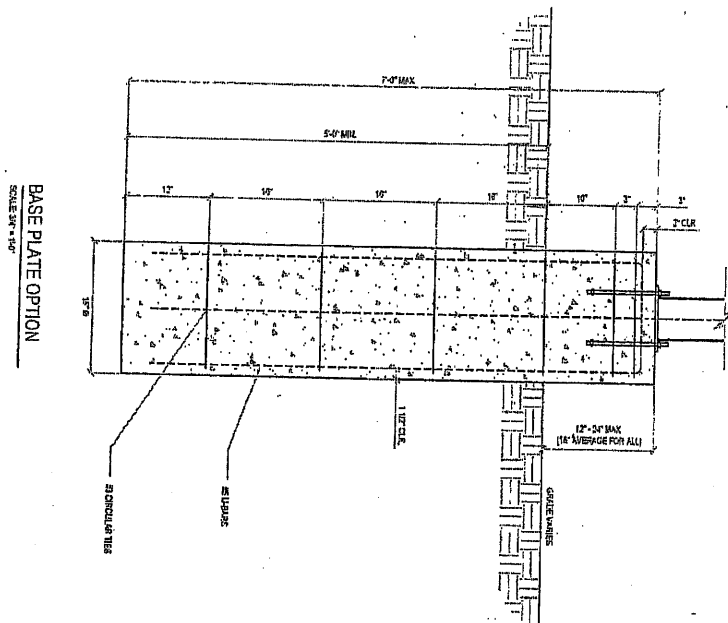
## WIND DESIGN DATA

- Basic Wind Speed = 105 MPH
- Exposure Category B
- Wind Importance Factor (I<sub>w</sub>) = 1.0
- Velocity Pressure Exposure Coefficient (K<sub>z</sub>) = 0.85
- Exposure B (K<sub>z</sub>) = 0.85
- Wind Directionality Factor (K<sub>d</sub>) = 0.85
- Topographical Factor (K<sub>t</sub>) = 1.0
- Gust Effect Factor (G<sub>f</sub>) = 0.85
- Average Wind Pressure (p<sub>w</sub>) = 13.57 PSF
- Average Net Force Coeff. (C<sub>f</sub>) = -1.6
- Design Wind Pressure = -13.57 PSF

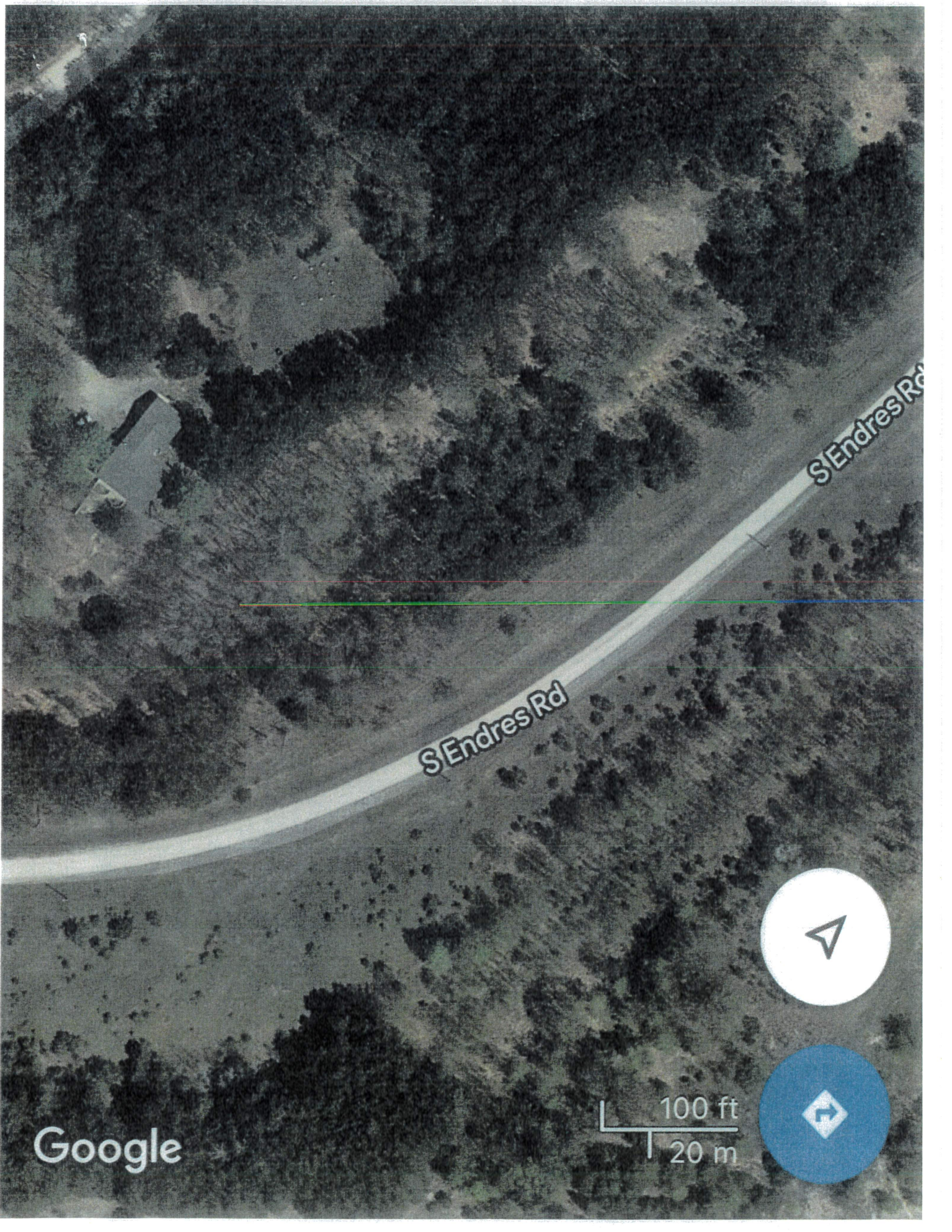
## MATERIALS

- W-Shape Support Post: ASTM A36 or A992
- Round Pipe: ASTM A53 Gr. B
- Steel Plate: ASTM A572 Gr. 50
- Bolt: ASTM A307 Gr. A
- Nut: ASTM A307 Gr. A
- Washer: ASTM A307 Gr. A
- Anchor Bolt: ASTM A307 Gr. A
- Concrete: Min. 2,500 PSI (28 days)
- Horizontal Tie: ASTM A307 Gr. A
- Anchor nuts: ASTM F1554 Gr. 36

7. Foundations shall be cast directly against undisturbed earth to the minimum depth shown or deeper such that local load protection requirements are satisfied.
8. It is recommended that the foundation and frame design be reviewed by a local engineer when actual soil conditions or site topography differ from those described above.
9. All reinforcing bars shall maintain 1-1/2" inches clear cover to the outside face of the footing unless noted otherwise.
10. The main reinforcement shall extend to the full length of the footing.
11. All reinforcing bars shall extend to the full length of the footing.
12. All reinforcing bars shall extend to the full length of the footing.
13. All reinforcing bars shall extend to the full length of the footing.







SEndres Rd

SEndres Rd

Google

100 ft  
20 m







THRASOS  
EFTAXIADIS

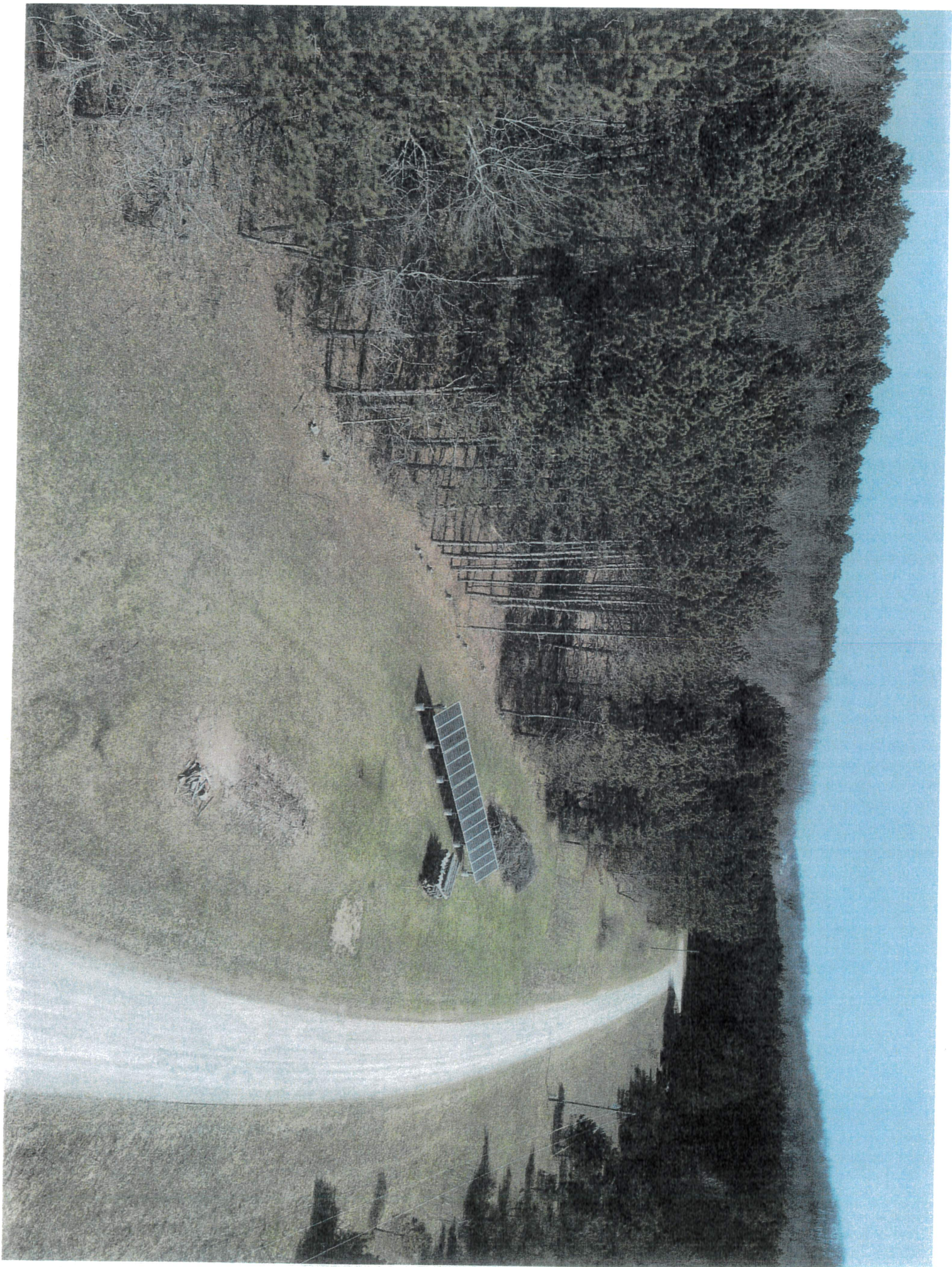


Endres Ct

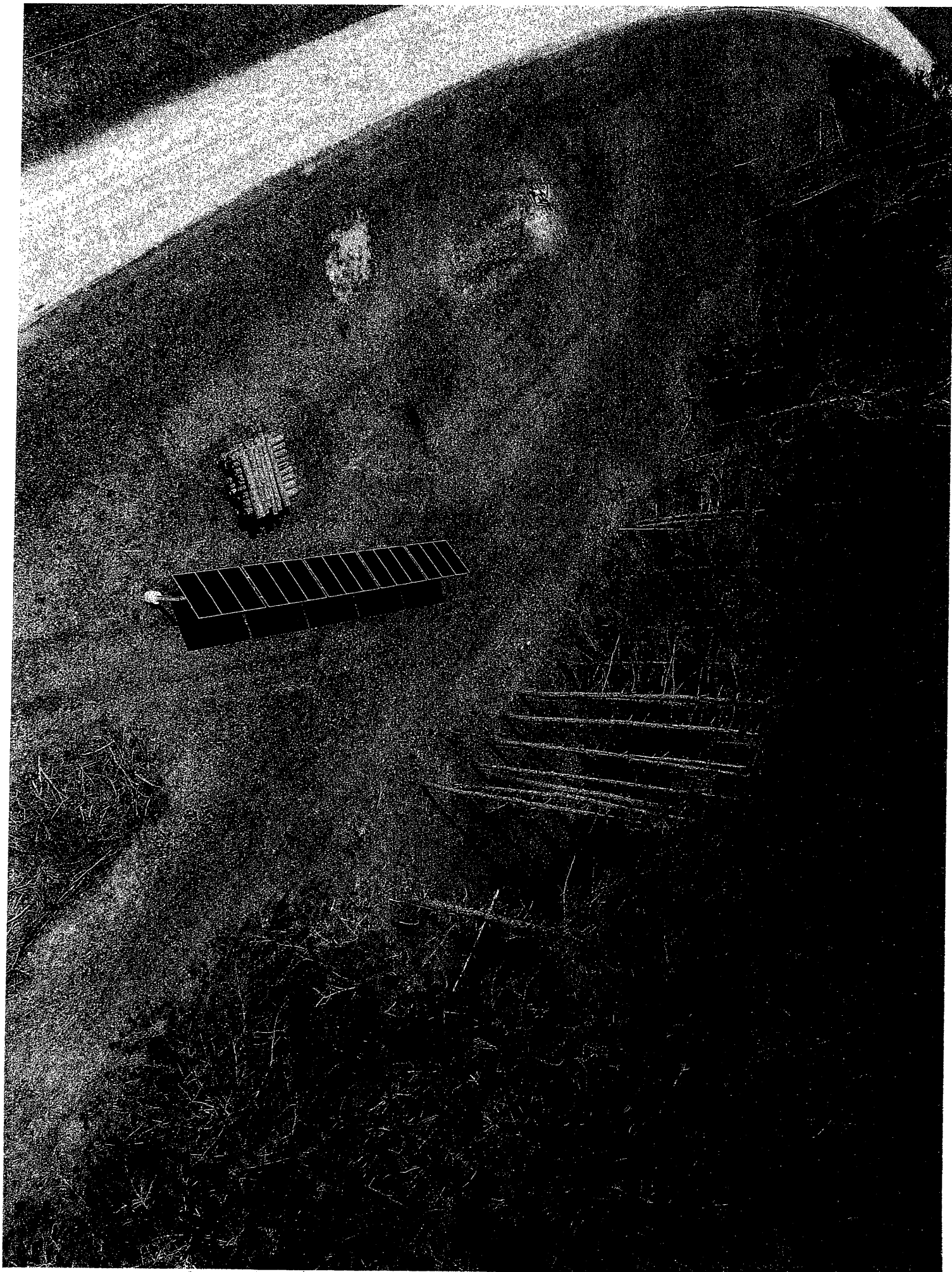
Endres Ct

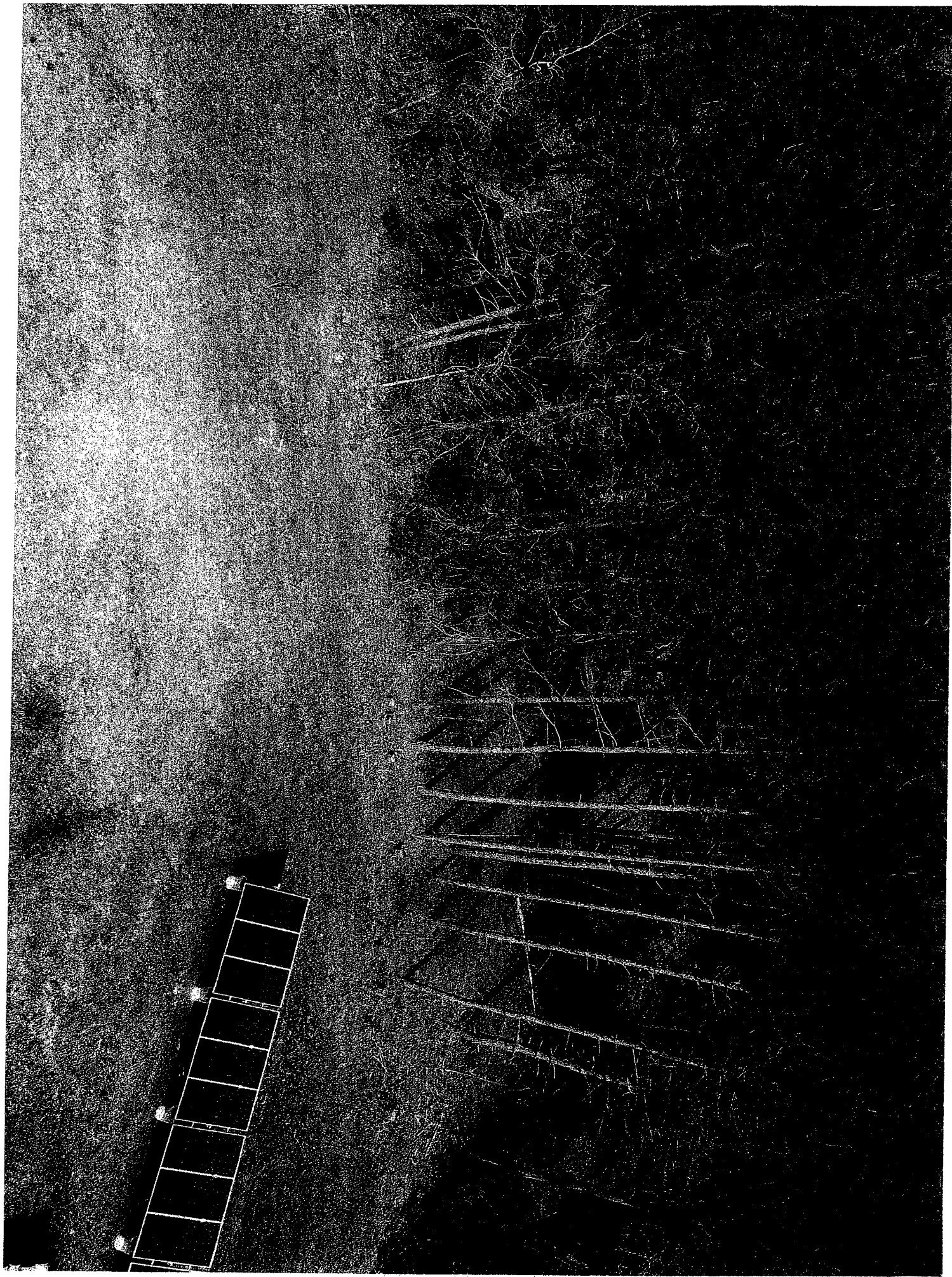


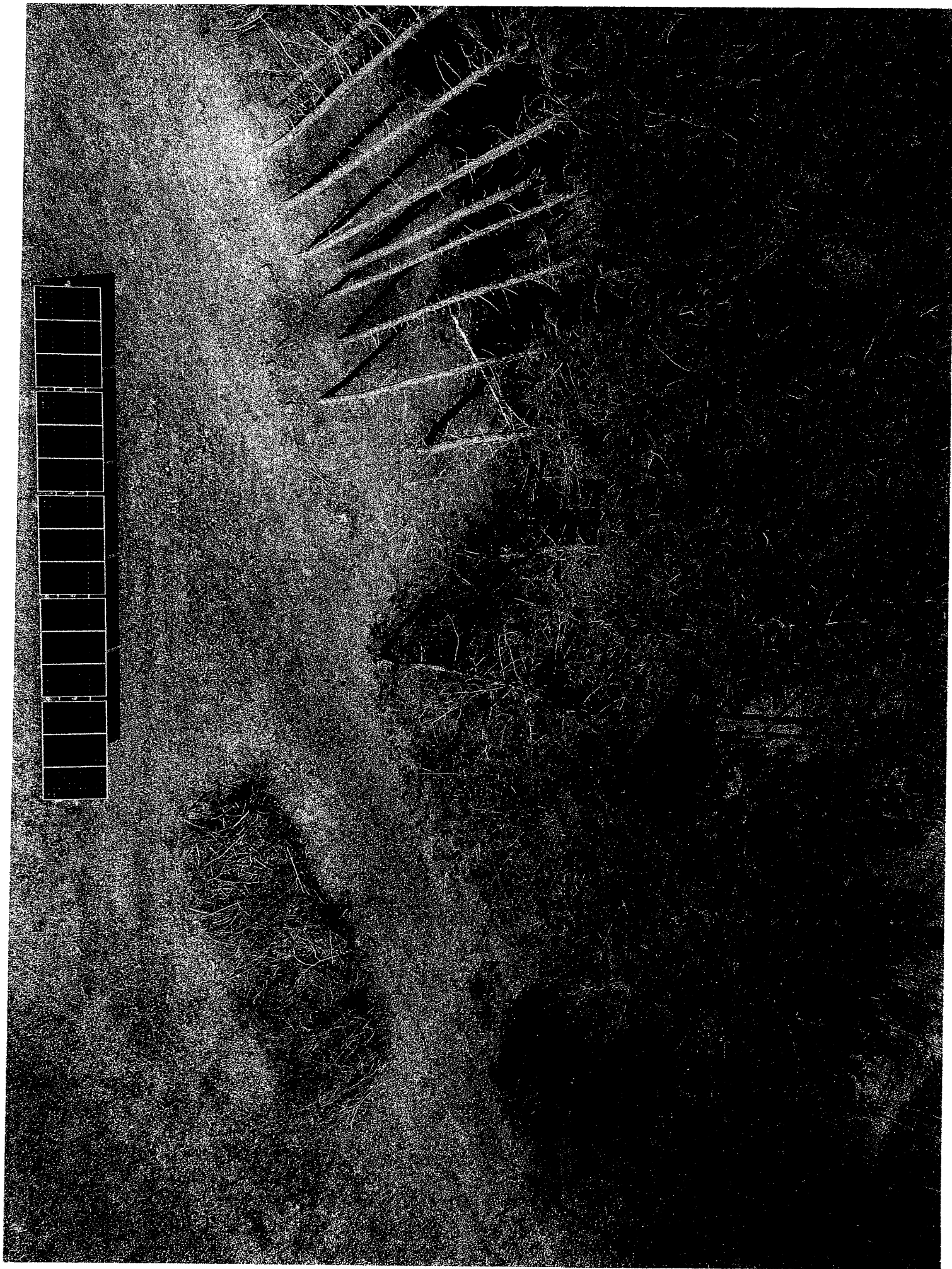




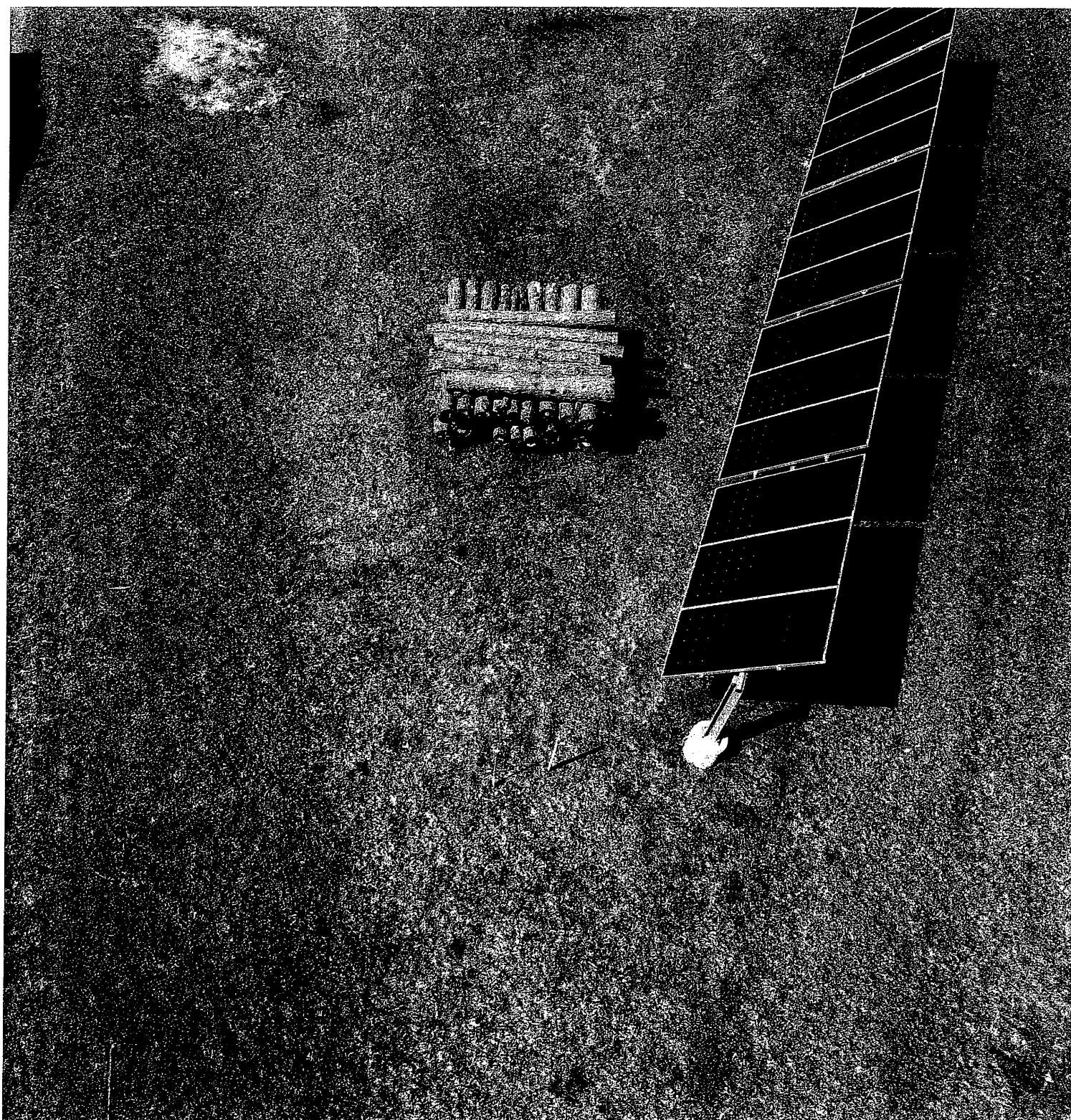




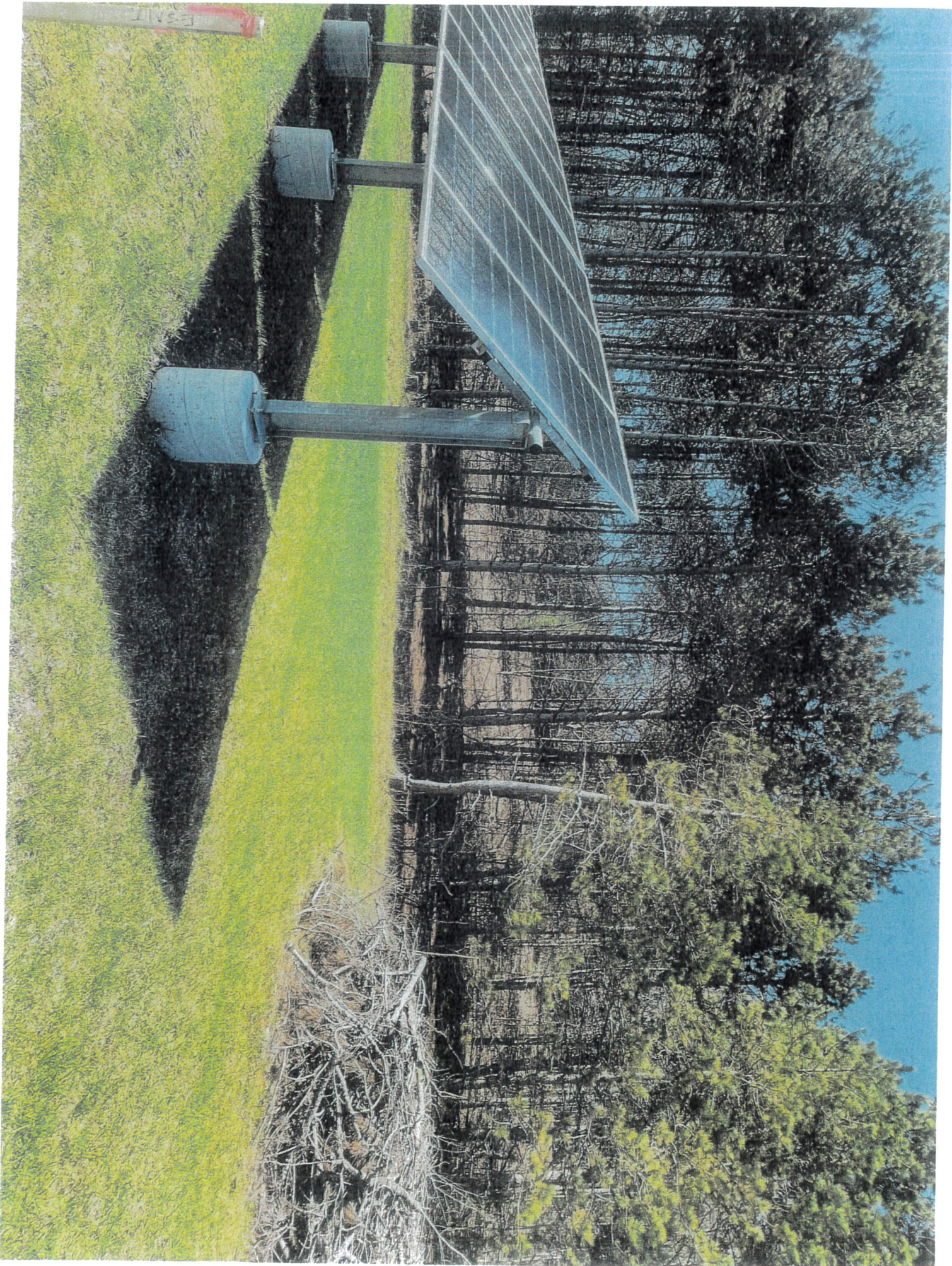








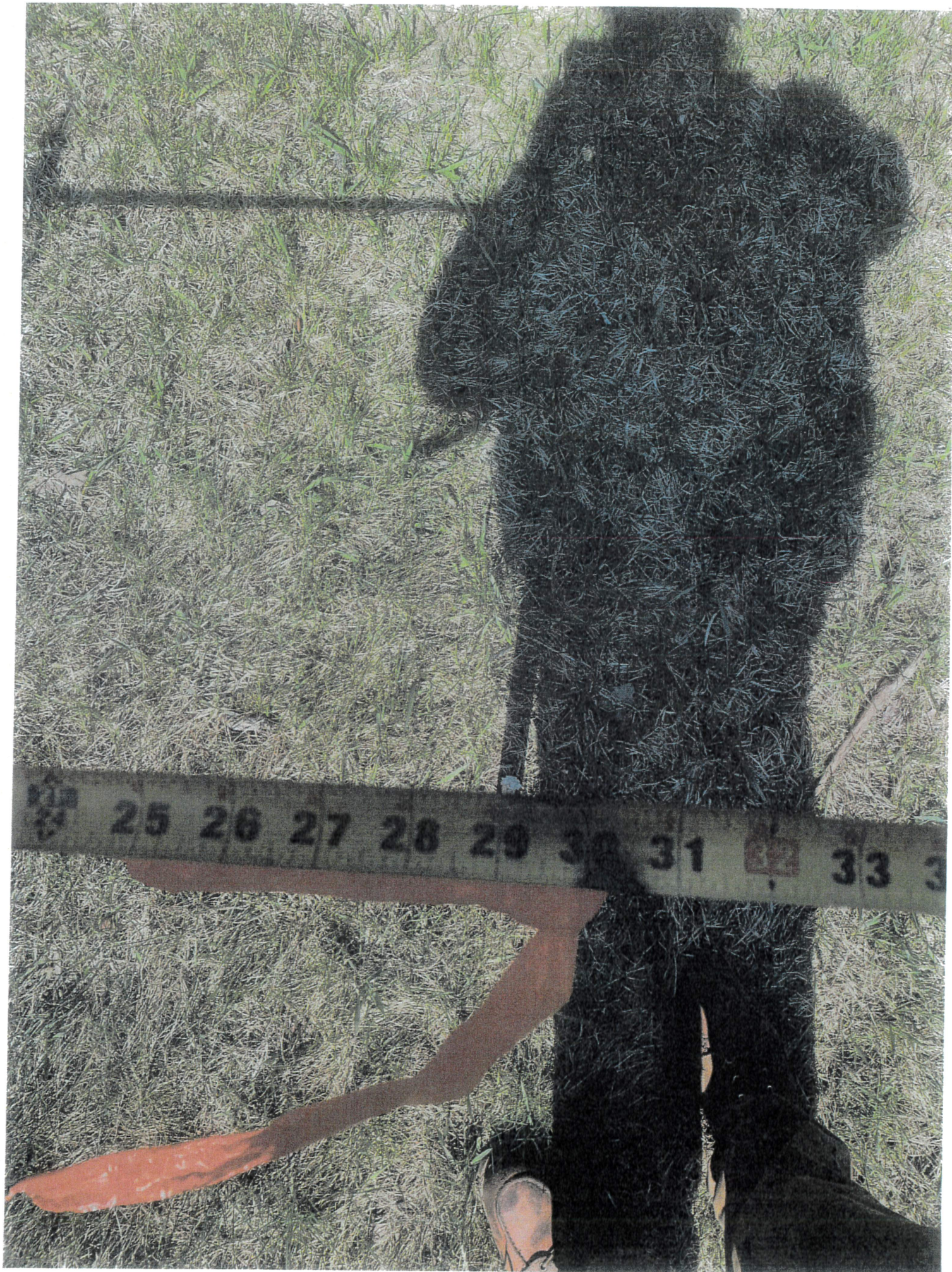




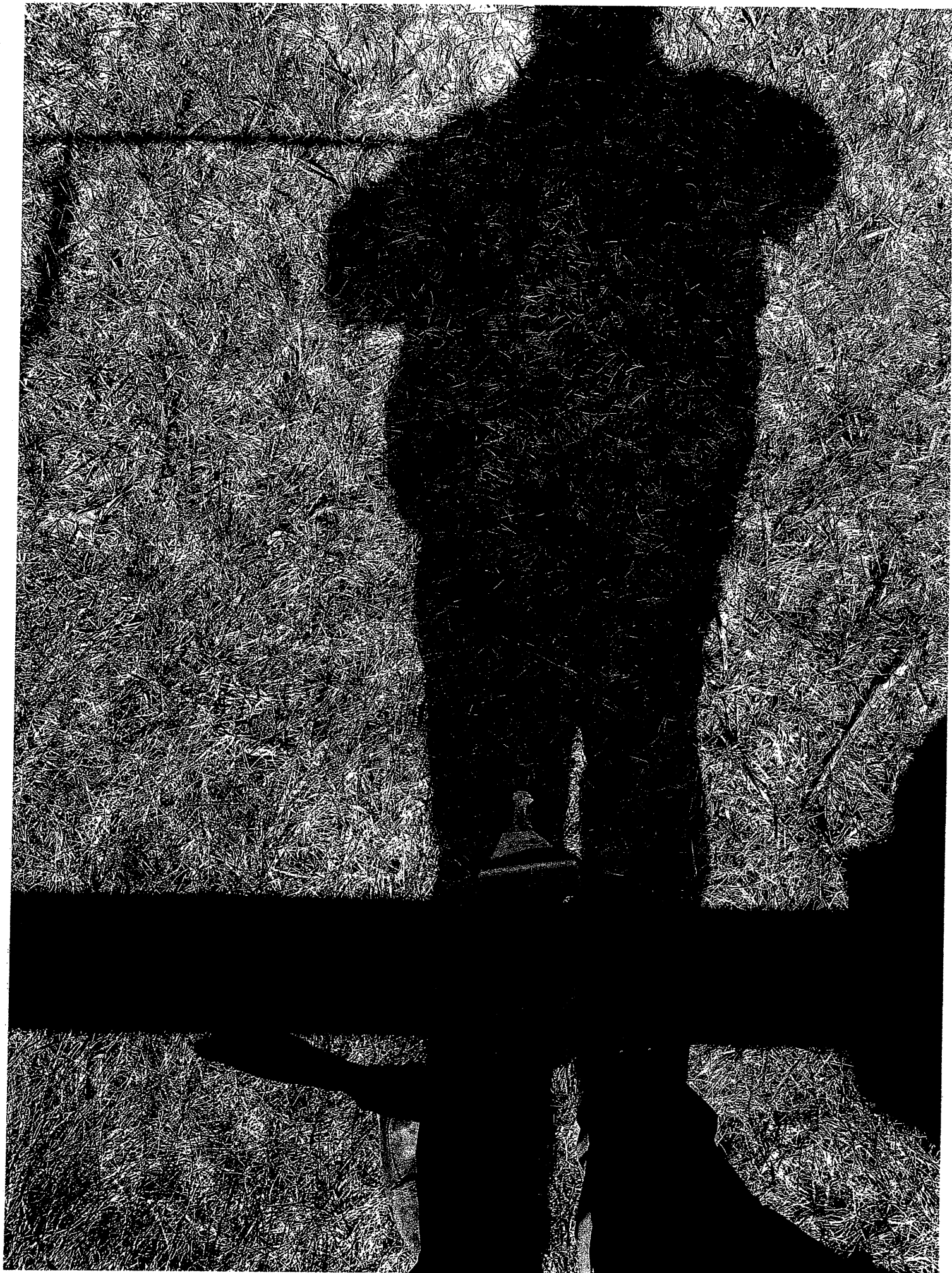




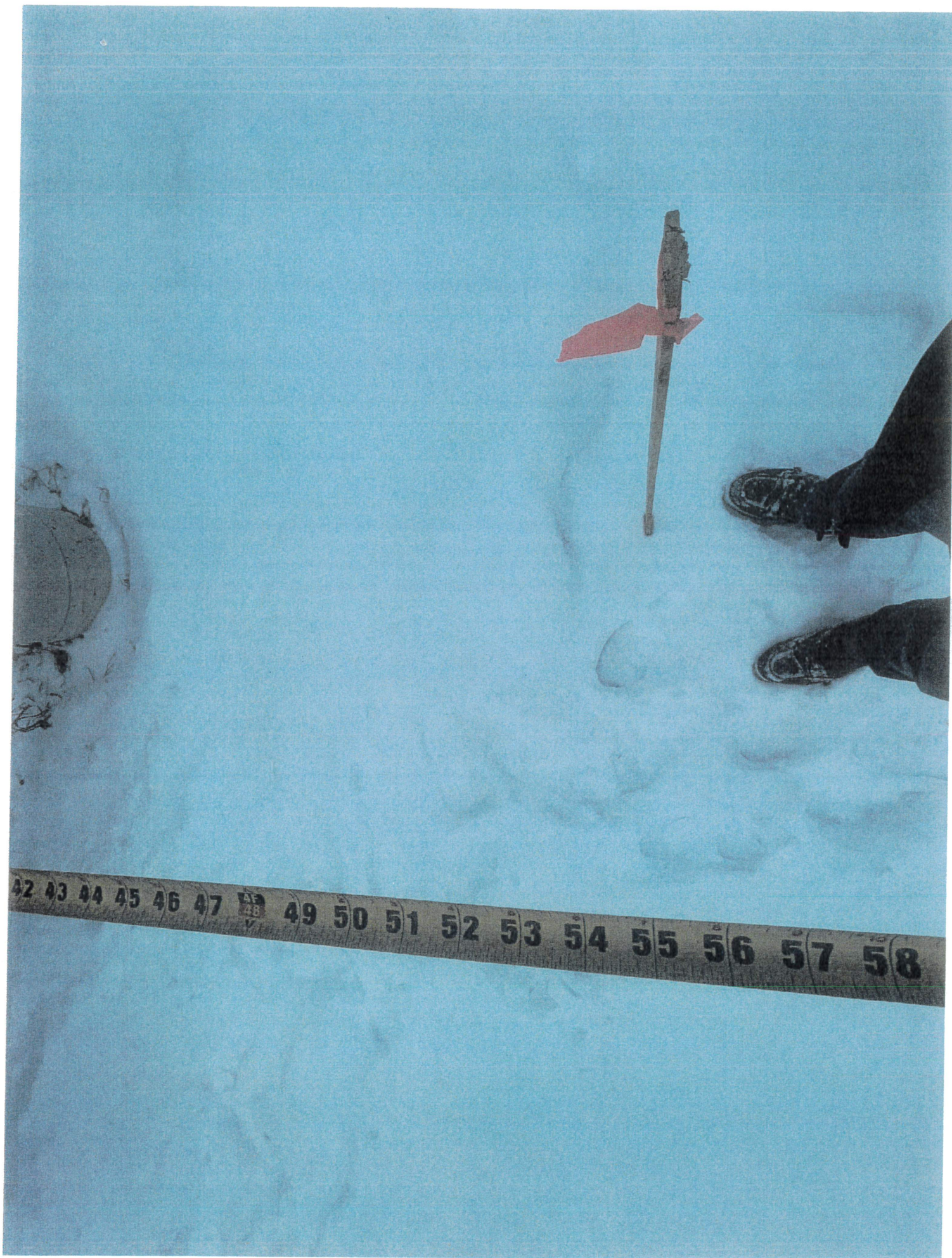














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(231) 533-8635  
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www.upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

**M E M O R A N D U M**

**TO:** Zoning Board of Appeals **VIA EMAIL**  
Elmwood Charter Township

**FROM:** Bryan E. Graham *BEG*

**DATE:** May 11, 2022

**SUBJECT:** Memo concerning the dimensional variance request by Thrastos Eftaxiadis and Debra VanLeen

This memo is intended to address the legal issues surrounding the dimensional variance request by Thrastos Eftaxiadis and Debra VanLeen. The property owners desire to maintain a ground mounted solar array on their property located at 10321 South Endres Hill Court, Traverse City, Michigan.

There has been conflicting information presented concerning the size of the variance necessary to lawfully maintain the solar array in its present location. According to the information submitted by the property owners, they are requesting a 22 feet variance from the northwest right-of-way line of S. Endres Road. According to the information submitted by John Melichar the 22 feet variance requested is not sufficient to bring the solar array into compliance with the setback requirement.

Because the variance standards that must be applied in this dimensional variance request will be the same regardless of the actual size of the variance, it is my recommendation that the requested variance be described as the variance needed to maintain the solar array in its present location. If the Board finds that the variance standards have been met, then the solar array can be maintained. On the other hand, if the Board finds that the variance standards have not been met, then the solar array will need to be removed, either voluntarily or through an enforcement action by the township.

Finally, it is important to acknowledge that the solar array has already been constructed in its present location. Because the solar array does not comply with the zoning ordinance setback requirements, it is technically in violation of the zoning ordinance. Having said that, however, the Board when considering the requested dimensional variance should not take into consideration this zoning ordinance violation. In addition, the Board should not take into consideration the cost of removing or relocating the solar

array as grounds justifying the requested dimensional variance. Rather, the Board should apply the dimensional variance standards as if the solar array has not been already constructed. Again, if the standards are met, the solar array can remain (or could have been placed in that location if the variance had been granted prior to construction). If the standards are not met, the solar array must be removed or relocated.

Let me now analyze the applicable zoning ordinance provisions. The property is located within the R-2 zoning district. Pursuant to Section 3.19 of the zoning ordinance, solar panels are allowed in all zoning districts as a permitted use. Because the solar panels are constructed with a permanent location on the ground, those solar panels fall within the definition of structure in the zoning ordinance and must comply with the applicable setback.

The subject property is a corner lot as defined in the zoning ordinance. As a result, a front setback from each private road must be observed. Under Section 5.6 of the zoning ordinance the front setback in the R-2 zoning district is 30 feet.

The zoning ordinance defines the term setback as follows:

**Setback.** The minimum horizontal unoccupied distance required by the zoning districts of this Ordinance **between the lot line or the shoreline and the principal or accessory building or structure.** The setback shall be measured at a parallel or tangent to the appropriate lot line. Where any lot line extends into an access easement or right-of-way, the setback shall be measured from the right-of-way or easement line. (Emphasis added.)

The zoning ordinance defines the term front lot line as follows:

**Lot Lines.** The lines bounding a parcel herein described.

A. Lot Line, Front.

1. The lot line which is or contains the **road line** of the principal road or right-of-way providing access to a parcel.
2. In the case of a corner lot or a through lot, both front lot lines shall be considered the front.

(Emphasis added.)

Based on these zoning ordinance definitions, the 30 feet setback is measured from the road line, or right-of-way, of the private road (S. Enders Road) and not from the center of that private road.



Before I discuss the dimensional variance standards found in Section 12.6.A.1 and 2 of the zoning ordinance, it is important to address an evidentiary matter. Some of the photographs presented by Mr. Melichar appear to be taken by a drone. To the extent that some photographs were taken from a drone flying over the owners' property, the legal question that must be addressed is whether the Board should consider these drone photographs.

MCL 259.322(3) provides:

**A person shall not knowingly and intentionally operate an unmanned aircraft system to violate section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, or to otherwise capture photographs, video, or audio recordings of an individual in a manner that would invade the individual's reasonable expectation of privacy.** (Emphasis added.)

The Michigan Court of Appeals addressed the issue of privacy in *Long Lake Township v Maxon*, 336 Mich App 521 (2021). At issue in that case was the legality of the use of a drone by plaintiff Long Lake Township to take aerial images of defendants' property without defendants' permission or any other specific legal authorization. Of particular importance in that case was the fact that the aerial surveillance was of the defendants' curtilage (area immediately surrounding the home). In deciding that the aerial surveillance was in violation of the owner's privacy, the Court stated:

We conclude that drone surveillance of this nature intrudes into people's reasonable expectations of privacy, so such surveillance implicates the Fourth Amendment and is illegal without a warrant or a traditional exception to the warrant requirement. *Id.*, p. 538.

In the present situation, the photographs taken from the drone were not of the property owners' curtilage. As a result, an argument can be made that the use of the drone in the present situation did not violate the property owners' privacy. Having said that, however, the photographs of the solar array taken from the drone do not add information not already known concerning the location of the solar array. Because these photographs do not add probative value to the facts of this matter, it is my advice that the Board not rely on those photographs. In other words, the Board's use of the aerial photographs taken by the drone is not worth the legal risk associated with the unauthorized drone flight.

The next a legal issue that must be addressed is whether the presence of mature trees can be the grounds legally for a dimensional variance. The property owners have provided information that the solar array must be oriented toward the south to function. They also provided information that they did not locate the solar array in a different location because of the presence of approximately 75 mature trees.

The Michigan Court of Appeals in *Indian Village Manor Co v Detroit*, 5 Mich App 679 (1967), addressed whether the presence of trees can be the basis of a dimensional variance. In that case the property owner sought to construct a new identification sign clearly visible to motorists on the adjacent public street. The owner's current sign was thought inadequate due to a dense row of large elm trees. The new sign would be located in front of the existing elm trees. This location, however, required a dimensional variance from the 20 feet front setback. The ZBA granted the requested variance, and the matter was appealed.

In upholding the variance, the Court stated:

There was evidence received showing, and appellant does not deny, that appellee is a large international union, that it should be clearly identified for the convenience of its many visitors, and that **the row of large elms located close to the lot line would obstruct the view of any sign placed behind them**. These facts are clearly established on the record and **we agree that these constitute the "special conditions" involving the "practical difficulties" required under the ordinance to grant a variance**. *Id.*, p. 684. (Emphasis added.)

In this situation, although the presence of the 75 mature trees can serve as the legal basis to grant a variance, the property owners must still comply with the standards of the zoning ordinance for granting a dimensional variance. I will now address those variance standards found in Section 12.6 of the zoning ordinance.

Concerning the basic conditions,

- a. The requested variance will allow the solar array to remain in its present location. Section 4.3 of the zoning ordinance specifies the intent of the R-2 zoning district in the following terms:

The R-2 zoning district allows single-family and two family residential **and related uses** in semi-rural areas of the township. (Emphasis added.)

In addition, Section 3.19 of the zoning ordinance specifies that solar panels are allowed in all zoning districts as a permitted use.

If you find that the solar array is related to the single-family use on the property, then you can find that the requested variance is not contrary to the intent and purpose of the zoning ordinance. If you make that finding, then this standard would be met.

- b. The solar array is expressly authorized in the R-2 zoning district pursuant to Section 3.19 of the zoning ordinance. As a result, this standard would be met.

- c. The property owners indicated in their application material that the presence of the solar array enhances their property and improves the natural environment by producing clean energy. I am not aware of any other evidence presented establishing that the existence of the solar array would cause a substantial adverse effect upon property in the area.

Therefore, if you accept the information from the property owners, you can find that the requested variance would not cause a substantial adverse effect on property. If you make that finding, then this standard would be met.

- d. The need for the requested variance is due to two specific factors in this matter: (1) the solar array must be oriented toward the south in order to function and (2) the solar array cannot be located elsewhere on the property because in those other areas the solar array would be blocked by approximately 75 mature trees.

Therefore, if you accept the information from the property owners, you can find that the requested variance is specific to this particular property and not so general or recurrent in nature so as to require the formulation of a general regulation to address these conditions. If you make these findings, then this standard would be met.

- e. The requested variance only relates to the property owned by the property owners. As a result, this standard would be met.

- f. As indicated above, the need for the requested variance is due to two specific factors in this matter: (1) the solar array must be oriented toward the south in order to function and (2) the solar array cannot be located elsewhere on the property because in those other areas the solar array would be blocked by approximately 75 mature trees.

Because the Board will be applying the variance standards as if the solar array was not constructed, the miscalculation in the setback measurement is not relevant.

As also indicated earlier, the reason the solar array cannot be located in a different location on the property is due to the presence of the approximately 75 mature trees. The existence of the trees predated the desire to locate the solar array. In other words, the property owners did not plant the trees.

Therefore, if you accept the information from the property owners, you can find that the conditions that are causing the need for requested variance were not created by the property owners. If you make these findings, then this standard would be met.

- g. As indicated above, the need for the requested variance is due to two specific factors in this matter: (1) the solar array must be oriented toward the south in order to function and (2) the solar array cannot be located elsewhere on the property because in those other areas the solar array would be blocked by approximately 75 mature trees. Because these factors are specific to the subject property, this requested variance will not create a future precedence, except for those situations that present the same factual conditions.

Therefore, if you make these findings, you can find that this standard has been met.

Concerning the special conditions, only one of the special conditions must be met. Based on the *Indian Village Manor Co* case, the presence of the approximately 75 mature trees that would block the solar array if located in a different area of the property, would constitute the practical difficulties needed under subsection a. Therefore, if you make that finding, then you can find that the special condition in subsection a has been met.

If you have questions concerning this memo, I will be attending the ZBA hearing next week and can answer your questions at that time.

BEG

## **Zoning Board of Appeals Exhibit List**

ZBA 2022-05

10321 S Endres Road

Variance request for a 22 foot front yard setback variance for solar panels

A. Elmwood Township Zoning Ordinance

B. Zoning Board of Appeals application (submitted by Applicant) containing:

1. ZBA Application Form
2. Cover letter dated 4/5/2022
3. Exhibit A1 (picture of solar array)
4. Exhibit A2 (picture of solar array)
5. Exhibit B (aerial photo of property)
6. Exhibit C (Survey Sketch by Bob Mitchell & Associates P.C. dated 3/31/22)
7. Exhibit D (picture of solar array and survey stakes)
8. Attachment A (Endres letter of support)

C. Public Hearing Notice with Mailing List

D. Undated Melichar Letter of Opposition (20pgs)

E. Memo dated May 11, 2022 from Bryan E. Graham

F.

G.

